(1)

Supreme Court, U.S.
FILED

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No. _____
SUPREME COURT OF THE UNITED STATES
October Term, 1997

DONALD EDGAR JOHNSON AND CLASS OF NONLAWYER PUBLIC SERVICERS CONFIDENCE GAME-SWINDLED-TO-INDIGENCY BY BAD FAITH STATE AGENTS WHO KEEP INTERFERING WITH CIVIL/CONSTITUTIONAL RIGHTS OF REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, AND JUST COMPENSATION

Petitioners,

V.

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR.; THE ESTATE OF CARL ALFRED JOHNSON, SR.; LANDMAN, LATIMER, CLINK & ROBB; CULVER, LAGUE & McNALLY; O'TOOLE, STEVENS, JOHNSON, KNOWLTON & ROLF; O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND, PC; **THE STATE OF MICHIGAN**; AND ROBERT J. DANHOF, MICHIGAN COURT OF APPEALS 1978-89 CHIEF JUDGE; Jointly And Severally,

Respondents.

On Petition For Writ Of Certiorari To The U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

EMERGENCY PETITION FOR WRIT OF CERTIORARI

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150 pp

I.

WHETHER A UNITED STATES COURT OF APPEALS HAS ENTERED A DECISION TANTAMOUNT TO APPROVING AN UNQUALIFIED DISTRICT JUDGE'S REFUSING TO STOP PLAINTIFF'S FORMER LAW FIRMS' DERIVATIVE FIRMS' DUAL REPRESENTATION OF NIGHTCLUB'S SELLERS AND FAMILY JOINT-VENTURERS-DISGUISED-AS-MONEYLENDERS BUYERS, CONDONING STATE'S IMMUNITY FROM JUST COMPENSATION OBLIGATION, ATTEMPTING TO DISMISS ACTION BY FRAUDS UPON COURTS, AND DENYING APPLICATION FOR A 3-JUDGE COURT FOR VINDICATION OF FEDERAL CONSTITUTIONAL RIGHTS IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT?

II.

AT THE ONSET OF PRO SE NONLAWYER PUBLIC SERVICER'S FEDERAL QUESTION-CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS CLASS ACTION PRETRIAL PROCEEDING, WHETHER THE DISTRICT COURT SHOULD STOP STATE AGENT PERPETRATOR LAW FIRMS' DERIVATIVE FIRMS FROM DUAL REPRESENTATION OF PUBLIC NIGHTCLUB SELLERS AND NONLAWYER'S FAMILY JOINT VENTURERS-DISGUISED-AS-MONEYLENDERS BUYERS THAT ALLEGEDLY CONDONED PERPETRATION AND PERPETUATION OF THEIR CONTINUING CHAIN OF FRAUDS AND UNDUE INFLUENCE UPON COURTS IN THEIR "JOINT VENTURE BAIT AND SWITCH TO MONEYLENDER" CONFIDENCE GAME-THREAT OF VIOLENCE-TAKING OF TOTAL PRIVATE PROPERTIES PURSUANT TO STATE LAW FOR PUBLIC AND PRIVATE USE WITHOUT REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, OR JUST COMPENSATION?

III.

WHETHER THE STATE AND IT'S BAD FAITH AGENTS ARE NOT 11TH AMENDMENT IMMUNE FROM JUST COMPENSATION JOINT OBLIGATION AND ACCOUNTABILITY WHO SWINDLED NONLAWYER PUBLIC SERVICER TO INDIGENCY, THEN IN INADEQUATE FORUMS KEPT INTERFERING WITH REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, AND JUST COMPENSATION FOR PRIVATE PROPERTIES/POWER OF ATTORNEYS TAKEN FOR PUBLIC USE PURSUANT TO STATE LAWS.

IV.

WHETHER ALL NONLAWYER PUBLIC SERVICERS WOULD HAVE A COMMON INTEREST IN PREVENTING UNCONSTITUTIONAL CONFIDENCE GAME TAKING UNDER THREAT OF VIOLENCE OF SUBSTANTUAL PRIVATE PROPERTIES FOR PUBLIC USE WITHOUT REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, OR JUST COMPENSATION PLUS LONGTIME UNLAWFUL CONSPIRING TO INTERFERE WITH CIVIL RIGHTS; AND FEDERAL QUESTION-CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS ACTION BROUGHT BY PRO SE NONLAWYER PUBLIC SERVICER WOULD BE MAINTAINABLE AS A CLASS ACTION AS TO QUESTION OF CONFIDENCE GAME-THREAT OF VIOLENCE-TAKING OF PRIVATE PROPERTIES FOR PUBLIC USE WITHOUT DUE PROCESS OR JUST COMPENSATION PLUS INTERFERING WITH CIVIL RIGHTS IMPOSED BY THE STATE'S BAD FAITH AGENTS WHO SWINDLE NONLAWYER PUBLIC SERVICERS TO INDIGENCY, THEN DISCRIMINATE AGAINST THEM IN THE COURTS?

V.

WHERE THE DISTRICT JUDGE KNOWINGLY COMMITTED FRAUDS UPON COURTS ALONGSIDE DEFENDANTS FOR ATTEMPTED PROCURING AND PROLONGING OF A DISMISSAL OF THE ACTION, WHETHER COURT OF APPEALS SHOULD HAVE ORDERED THAT A REPLACEMENT DISTRICT JUDGE PROMPTLY RULE ON REQUESTS FOR DISCOVERIES, CLASS CERTIFICATION, DECLARATORY JUDGMENT, AND SUBSTANTIALITY OF NONLAWYER'S 1964-97 CONSTITUTIONAL CLAIMS FOR DETERMINING "MAGISTRATE-ONE JUDGE" OR "NO MAGISTRATE-THREE JUDGE" DISTRICT COURT INJUNCTIVE RELIEF; OR, IN THE ALTERNATIVE, THE CHIEF JUDGE OF THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT SHOULD HAVE CONVENED A THREE- JUDGE COURT?

VI.

AFTER RES JUDICATA PRETRIAL DISMISSAL OF COMPLAINT WITHOUT DUE PROCESS-EQUAL PROTECTION, FOUR FRUITLESS INTERLOCUTORY APPEALS INTERVENED BY UNQUALIFIED APPELLATE JUDGE/PERPETRATOR, AND UNQUALIFIED DISTRICT JUDGE CONDUCTED DE NOVO REVIEW OF OBJECTIONS THEN ENTERED JUDGMENT ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION TO DENY RELIEF OF A FIRST-EVER FEDERAL HEARING FOR POSSIBLE 3-JUDGE COURT WITH OR WITHOUT THAT DISTRICT JUDGE FOR VINDICATION OF FEDERAL CONSTITUTIONAL CLAIMS RESULTED FROM "NO ADEQUATE STATE FORUM"; WHETHER THE JUDGMENT APPEALED FROM WAS A FINAL DECISION OF DISTRICT COURT -- ENSURING COURT OF APPEALS' FRCP 60(b)(6); 28 USC §§ 144, 636, 1291, 2283, 2284 JURISDICTION?

VII.

WHETHER 1964-94 STATE EVIDENCE PLUS 1990-95 FEDERAL EVIDENCE MUST BE TRANSMITTED TO DISTRICT COURT FROM STATE COURTS AND THE CHICAGO ARCHIVES?

VIII.

WHETHER 25-YEARS PRO SE NONLAWYER PUBLIC SERVICER WHO SUCCESSFULLY LITIGATED AGAINST DEFENDANTS' AND COURT JUDGE'S FRAUDS UPON COURTS WITHOUT DUE PROCESS-EQUAL PROTECTION SHALL RECOVER SIX YEARS' CIVIL RIGHTS CLASS ACTION'S REASONABLE ATTORNEY'S FEE AND EXPENSES UNDER CIVIL RIGHTS ATTORNEY'S FEES AWARD ACT OF 1976 (42 U.S.C.S. § 1988)?

PARTIES TO THE PROCEEDINGS

DONALD EDGAR JOHNSON,[n1] AND CLASS OF NONLAWYER PUBLIC SERVICERS CONFIDENCE GAME-SWINDLED-TO-INDIGENCY, THEN DENIED DUE PROCESS AND JUST COMPENSATION BY BAD FAITH STATE AGENTS

Petitioners,

V.

RICHARD GORDON JOHNSON,[n2]

CARL ALFRED JOHNSON, JR.,[n3]

THE ESTATE OF CARL ALFRED JOHNSON, SR.,[n4]

LANDMAN, LATIMER, CLINK & ROBB,[n5]

CULVER, LAGUE & McNALLY,[n6]

O'TOOLE, STEVENS, JOHNSON, KNOWLTON & ROLF,[n7]

O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND PC,[n8]

THE STATE OF MICHIGAN, And ROBERT J. DANHOF, Michigan Court of Appeals 1978-89 Chief Judge,

Jointly And Severally.

Respondents.

[n1] In behalf of himself, his proof of ownership of stolen 1955-65 KANDY TAPES & RECORDS CORP. [(Indiana-Amer.Fed. Musicians) no parent or subsidiaries], his stolen Kandy Music Publishers (BMI) and a yet-to-be-certified class of nonlawyer public servicers swindled by State agents.

[n2] Plus JOHNSON MOLD & MFG CO. Mich. Corp., etc.

[n3] Plus PORT CITY MACHINE & TOOL CO. Mich. Corp.

[n4] Plus PORT CITY MACHINE & TOOL CO. Mich. Corp.

[n5] LANDMAN LATIMER CLINK & ROBB Mich. Corp.?

[n6] CULVER KNOWLTON EVEN & FRANKS Mich. Corp.

[n7] O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND, PC

[n8] PARMENTER & O'TOOLE Mich. Corp.

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Johnson v. Johnson, No. 91-1160, 1991 U.S. App. LEXIS 17922, at *2 (6th Cir. July 29, 1991, cert. denied, 502 US 1059, 117 LE2d 109 (1992).

Johnson v. Johnson, No. 92-1829, 1992 U.S. App. LEXIS 34749, at *4-5 WL 392892 (6th Cir. Dec. 23, 1992), S.Ct. #93-557 writ of mandamus denied; reh. denied.

RELATED: DONALD EDGAR JOHNSON v. Estate of CARL A. JOHNSON, SR. No. 97521 Mich. Supreme Ct at 444 Mich 957 (1994), S.Ct. #94-146 writ of mandamus denied; reh denied.

Johnson v. Johnson, No. 94-2305, 1995 WL 385142 (6th Cir. April 13, 1995 & June 27, 1995), S.Ct. #95-934 cert. denied, 116 S.Ct. 916, reh denied (1996).

Donald Edgar Johnson v. Richard G. Johnson, et al, Nos. 96-1826 and 96-1979, 113 F3d 35 (6th Cir. 5/1/97 & 6/12/97), reh en banc denied. (There was no petition to U.S. Supreme Court).

JURISDICTION

The interlocutory Order sought to be reviewed was file-dated 2/10/98.

The denial of rehearing was 4/23/98, denial of 4/28/98 motion to stay mandate was 5/8/98, and there was no extension of time to file for a writ of certiorari.

The provisions believed to confere

jurisdiction to review are 28 USC §§ 1254(1), 1651,2101(c).

28 USC § 2403(a) may apply, service has been made on the Solicitor General of the United States pursuant to S Ct Rule 29.4(b), and the Court of Appeals for the Sixth Circuit did not certify to the U.S. Attorney General the fact that the constitutionality of Acts of Congress 28 USC §§ 2283,2284 were drawn into question.

CONSTITUTION AND LAWS INVOLVED

"Congress shall make no law * * * respecting the right of the people * * * to petition the Government for a redress of grievances." Const.Amend. 1.

"No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." Const. Amend. 5.

"All persons born * * * in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." Const. Amend. 14.

"If two or more persons in any State * * * conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the ue course of justice in any State or Territory with intent to deny to any citizen the equal protection of the laws, or to injure him or his proerty for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protction

of the laws; * * * If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws * * * whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators." 42 USC § 1985(2)(3).

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and Title "CRIMES." for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adopted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State where the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitutuion and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of section 1977, 1978, 1979, 1980, and 1981

of the Revised Statutes [42 USCS §§ 1981-1983, 1985, 1986], * * * the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 USCS § 1988.

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term [session] at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith." 28 USCS § 144.

"(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings; (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it; * * * (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party of the proceeding,

or any other interest that could be substantially affected by the outcome of the proceeding; (5) He * * * (iv) Is to the judge's knowledge likely to be a material witness in the proceedings." 28 USCS § 455(a)(b)(1)(2)(4)(5)(iv).

"Notwithstanding any provision of law to the contrary, the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties." 28 USC § 636(b)(1)(C).

"(b) * * * (3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States * * * (c) * * * (4) Notwithstanding the provisions of paragraph (3) of this subsection, at the time of reference to a magistrate, the parties may further consent to appeal on the record to a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals. Wherever possible the local rules of the district court and the rules promulgated by the conference shall endeavor to make such appeal inexpensive. The district court may affirm, reverse, modify, or remand the magistrate's judgment. (5) Cases in the district courts under paragraph (4) of this subsection may be reviewed by the appropriate United States court of appeals upon petition for leave to appeal by a party stating specific objections to the judgment. Nothing in this paragraph shall be construed to be a limitation on any party's right to seek review by the Supreme Court of the United States." 28 USC § 636(b)(3)(c)(4)(5).

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 USCS § 1331.

"The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to * * * copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in * * * copyright cases." 28 USC § 1338(a).

"The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 USC § 1651.

"A court of the United States may not grant an injunction to stay proceedings in a State court **except as expressly authorized by Act of Congress, or when necessary to aid of its jurisdicition,** or to protect or affectuate its judgments." 28 USCS § 2283. (Emphasis added).

"A district court of 3 judges shall be convended when otherwise required by Act of Congress." 28 USC § 2284(a). (Emphasis added).

"In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

(1) Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of

the State.

(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment." **28 USC § 2284(b)**.

"In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of an Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provision of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality." **28 USC § 2403(a)**.

"In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of the mind of a person may be avered generally." FRCVP 9(b).

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: * * * (5) ... it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time * * * This rule does not limit the power of a court to * * * set aside a judgment for fraud upon the court. * * * the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action." FRCVP 60(b)(5)(6).

"A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the magistrate judge deems sufficient unless the district judge otherwise directs. Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specifi written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the

matter to the magistrate judge with instructions." FRCVP 72(b).

STATEMENT OF THE CASE

This is not about gang-related shootings; rather, it is about gang-related confidence game takings under threat of violence of monumental private properties for public and private use without reasonable access, due process, equal protection, or just compensation.

The gangs are bad faith State agent multi-representation law firms, their greedy clients, and "bought" judges.

The confidence game victims are nonlawyer public servicers who can be "set up" into "joint venture bait and switch to moneylender" public nightclub purchase confidence games.

Two gangs of state agent law firms perpetrated and perpetuated their **1964-to-date** continuing chain of frauds and undue influence upon the courts in their "family joint venture bait and switch to moneylender" confidence game -- in violation of Amendments 1,5,14; 42 U.S.C. § 1985(2)(3).

Petitioner Donald Edgar Johnson (Don) has been and still is a member in good standing of the American Federation of Musicians of United States and Canada since joining at Ann Arbor, Michigan while attending University of Michigan as student of Engineering and Business Administration. And being reinstated in Chicago AFM 10 after 1943-47 serving in World War II as a private ASN 36457669 and an honorably discharged Transportation Corp. officer ASN 01951488.

Don was a nonlawyer public servicer whose substantial private music properties worth over $1,000,000, three power of attorneys, 6 years' 100 hours per week wages, and substantial cash were 1964-70 jointly taken by the bad faith defendant

3 Johnsons and their bad faith State agents' confidence game under Deft Carl A. Johnson-Jr's 1971 threat of violence for public and private use pursuant to state laws in inadequate-for-federal-laws state forums without reasonable access, due process, equal protection, or just compensation.

Don and "his" two motherless children ended up on public welfare.[n1]

State and federal prosecutors refused to prosecute.

Legal aid lawyers were a joke.

The just compensation clause of the Fifth Amendment was designed to bar a State and its agents from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. National Board of Y.M.C.A. v. U.S. (1969) 395 US 85, 25 LEd2d 117, 89 S Ct 1511.

When Michigan's bad faith agents, in exercise or attempted exercise of their official authority, delayed/denied Don equal protection of laws and deprived him of his properties without due process, the State of Michigan did so and such official action came within constitutional prohibitions. Douglas Park Jockey Club v. Grainger (1906 CC Ky) 146 F 414, rev on other grounds CA6 Ky) 145 F 513.

The 1970-94 judgments of Michigan courts, even if they were authorized by state statutes, whereby a major portion of Don's substantial private properties

n1 Their mother had married Don in 1954, immediately had affairs with other men while Don was entertaining in nightclubs, told Don that they were "his", and deserted Don and children 1960-61. Don and Pennsylvania lawyer got evidence of her neglecting children and Pennsylvania lawyers for Don and wife told Don not to waste time and money contesting her 1962 Pennsylvania divorce on FRAUD UPON COURTS ground that Don deserted her.

were taken for the state or under its direction for public use without compensation made or secured to Don, were and are wanting in the due process of law required by the 14th Amendment. Chicago R. & O. R. R. Co. v. Chicago (1897) 41 LEd 979.

The 5th Amendment's command that nonlawyer Don's private property shall not have been taken for public use without just compensation is obligatory on the State of Michigan. Webb's Fabulous Pharmacies, Inc., et al v. Bukwith (1980) 66 LEd2d 938,939.

Michigan lawyers who represent nonlawyers denied State-obligated due process and just compensation can jeopardize their legal careers by working against Michigan's state/county treasuries and their bad faith agents' frauds and undue influence upon the courts.

After very costly experiences with bad faith lawyers, nonlawyer Don is justified in representing himself and a class of similarly-swindled nonlawyers rather than allowing lawyers to take more cash fees for pretending to fight against Michigan's bad faith agents with near-insurmountable power and influence.

But nonlawyer public servicers who choose to represent themselves are the object of invidious discrimination in Michigan state courts.

State agent judges are both for the State's getting public service for free and against public servicers representing themselves. And Michigan's state courts were not level playing fields or adequate forums for adjudicating federal constitutional claims.

Especially where the Michigan Court of Appeals' 1978-89 Chief Judge had been nonjudicially perpetuating the deft 3 Johnsons joint venturers disguised as moneylenders when $3,000+ evaporated on then-attorney Danhof's watch from

a "Donald E. Johnson-founded" (not Donald Edgar Johnson) Muskegon Coop Federal Credit Union that had kept Don afloat 1969-70 as deft 3 Johnsons refused to incorporate fairly as promised, area nightclub competition tripled, area banks refused to refinance, a nearby nightclub provided a full dance orchestra playing one-man-band Don's kind of dance music, and Amer.Fed. Musicians union member Don was unable to continue paying union wages to waitresses-bartenders whose Bill Thornberry, top local union official/Club 87 Inc. nightclub competitor, was targeting takeover.

And where Michigan state courts were inadequate state forums, nonlawyer Petitioner Don and a class of Michigan nonlawyer public servicers -- swindled by bad faith state agents' frauds and undue influence upon the courts -- were 1973-89 unable to get their federal constitutional claims reviewed for vindicating their federal constitutional rights.

Moreover, Don was unable to 1990-97 get his constitutional claims reviewed for vindicating his federal constitutional rights in black[n2] U.S. District Judge Benjamin F. Gibson's **"magistrate-one judge"** Michigan federal district court

n2 "Don's" daughter deserted Don-on welfare and mothered black boy and a black girl several years later. A black Robert Cruthers of President's Office of Amer.Fed.Musicians U.S. & Canada investigated Grand Rapids, Michigan Gillard & Gillard Law firm's 1974 theft of Kandy Tapes & Records Corp. AFM affiliation booklet and soon the AFM was acknowledging loss of Kandy Tapes And Records Corp. affiliation rather than proper Kandy Tapes & Records Corp. affliation -- meaning that gangs probably used Don's corporation assets as collateral for loans at financial institutions: Some using "&" and others using "and" while utilizing the

case No. 1:90-cv-175 despite the four interlocutory appeals shown above.

On 4/17/90, Judge Gibson granted Don's motion for extra time to reply to 7 defendants' motions for dismissal and summary judgment.

On 5/10/90, Don Filed His 4th Amended Class Action 9-defendants Complaint:

"UNITED STATES DISTRICT COURT * * *
DONALD EDGAR JOHNSON AND CLASS OF
ALLEGED WHITE COLLAR CRIME VICTIMS,
Plaintiffs, HON BENJAMIN F. GIBSON
VS File No. 1:90-CV-175
RICHARD GORDON JOHNSON, CARL ALFRED JOHSON, JR., THE CARL A. JOHNSON, SR. ESTATE, THE LAW FIRMS OF LANDMAN LATIMER CLINK & ROBB, CULVER LAGUE & McNALLY, O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF, O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND P.C., AND THE STATE OF MICHIGAN AND/OR ITS COURT OF APPEALS' CHIEF JUDGE ROBERT DANHOF, Jointly And Severally, Defendants.

EMERGENCY PLAINTIFFS' PROPOSED 4TH AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES FOR TAKING 1922-1973-ACQUIRED PRIVATE PROPERTIES AND LIBERTIES FOR PRIVATE AND PUBLIC USE WITHOUT COMPENSATION OR 1973-1989 BASIC FUNDAMENTAL CONSTITUTIONAL ENTITLEMENTS IN STATE COURTS
JURY TRIAL DEMANDED. * * *

The Plaintiffs, Donald Edgar Johnson in pro per and a class of alleged white collar crime victims, say:

1. That plaintiff in pro per Donald Edgar Johnson is a 5½-years college-trained honorably discharged 5 years world war II veteran, 49 years member of American

n2 (cont'd) look-alike signature of the Muskegon Heights' Donald E. Johnson who died in 1996 after becoming Muskegon's Mayor while deft O'Toole became Muskegon's attorney. Don was not positive that 1956 son was not really "his" until his 1996 request for Don's Will.

Federation of Musicians, recording artist, composer, phono records corporation ex-president, ex-nightclub owner-operator-entertainer, citizen of the United States, and resident of the State of Michigan with his post office address of PO Box 5407, Muskegon, Michigan 49445. That the 3 Johnson defendants are father and younger brothers of plaintiff and owners of several machine, tool, mold, and manufacturing shops/Michigan corporations. Defendant Carl-Sr became deceased in January, 1986. Defendant Carl-Jr is an accomplished pianist. Defendant Richard was subsequently on the board of directors of the Hackley bank that 2/9/65 issued the significant "moneylenders" disguise/frauds upon the courts, the United States, and plaintiff. * * *

2. That plaintiff is suing in behalf of himself and members of a class of alleged white collar crime victims discriminated against where state prosecutors declined to prosecute and state courts declined to provide non-prejudicial due process, equal/parental protection of the laws, and just compensation against undue local influence and continuing frauds upon the courts.

3. That this action raises the following question:

'WHERE DEFENDANTS ARE ALLEGED TO HAVE CONSPIRED TO DISGUISE THE FATHER AND 2 BROTHERS DEFENDANTS AS SHORT TERM MONEY LENDERS OR MONEY GIVERS FOR WRONGFULLY TAKING SUBSTANTIAL PRIVATE PROPERTIES/ LIBERTIES FOR PRIVATE AND PUBLIC USE WITHOUT COMPENSATION -- WHETHER THE STATE OF MICHIGAN'S COUNTY TRIAL COURT'S 1974 DISMISSAL WAS PROCURED AND 15 YEARS PROLONGED BY CONTINUING FRAUDS UPON THE STATE COURTS WHERE ITS COURT OF APPEALS CHIEF JUDGE COMMITTED NON-JUDICIAL AND JUDICIAL CONTINUING CONSTITUTIONAL TORTS INCLUDING DEPRIVATION OF BASIC FUNDMENTAL ENTITLEMENTS OF DUE PROCESS OF A TIMELY EVIDENTIARY HEARING TO DETERMINE IF FRAUDS

EXISTED AND AN APPEAL OF RIGHT ON THE COMPETE WITH EVIDENCE RECORD OF A '3 YEARS RELIEF FROM JUDGMENT' ACTION FOR PLAINTIFF, A MEMBER OF A CLASS OF ALLEGED WHITE COLLAR CRIME VICTIMS?'

4. That this 8/20/64-11/29/89 matter involves * * * Muskegon County Circuit Court #73-C7432 plus #86-21207, Muskegon Probate Court #86-59607,and Michigan Court of Appeals 22496, 59895, 50565, 78170, 88008, 92822, and 108452. (All application for leave to appeal to Michigan Supreme Court were declined 'because we are not persuaded that the questions presented should be reviewed by this Court').

5. The plaintiff has filed the following copies of previous proceedings which are genuine: (a) white 1989 Petition to U.S. Supreme Court, (b) Tan 1989 Petition to U.S. Supreme Court, and (c) '462' photocopies. (Lower right corner page numbers of '462' documents are used herein.) * * *

7. No judge other than the 1974 trial judge John H. Piercey (now deceased) has seen the complete-with evidence trial court record and the original plaintiff's preponderance plus defendants' ONE exhibit * * *

8. Plaintiff's 1974 trial was on the 5th Amended Complaint, copy attached.

9. Plaintiff filed a timely 1986 claim against the defendant Carl A. Johnson, Sr. estate, copy attached.

10. THAT BETWEEN 8/20/64 AND 4/25/88, THE 3 JOHNSONS AND 4 LAW FIRMS DEFENDANTS AND/OR THEIR AGENTS CONSPIRED AND COMMITTED SIGNIFICANT CONTINUING FRAUDS UPON THE COURTS, THE PLAINTIFF, AND THE UNITED STATES -- PROVEN BY PLAINTIFF'S PREPONDERANCE OF EVIDENCE ENTERED, THEN ORDERED REMOVED, FROM SAID COUNTY CIRCUIT COURT #73-C7432 RECORD. 2/9/65 FRAUD, * * * 3/8/65 FRAUD, * * * 4/6/65 FRAUD, * * * 4/15/65 FRAUD, * * * 4/16/65 FRAUD, * * * 11/22/66 FRAUD, * * * 10/18/67 FRAUD, * * * 4/6-4/9/70 FRAUD, * * * 5/20/70

FRAUDS, * * * 5/20-6/20/70 FRAUDS, * * * 7/27/70-1974 Trial FRAUD, * * * 3/7/71 FRAUD, * * * 4/27/73-5/2/83 FRAUDS, * * * 5/6/83 **FRAUD UPON THE COURT**, * * * 2/10/86-6/20/86 **FRAUDS UPON THE COURTS**, * * * 12/30/86-4/25/88 **FRAUDS UPON THE COURT** * * *

12. The JURISDICTION OF THIS FEDERAL District Court is invoked under 28 USC § 1331 and FRCP 8(a)(1) in that this 1964-89 matter arises under the **Constitution** and laws of the United States.

13. The jurisdicition of this honorable court is further invoked under 42 USCS § 1985(2)(3) * * *

14. The 3 Johnsons defendants were on a 1964-1979 nightclub operating-purchase/phono records producing/selling joint venture to fairly incorporate and they deliberately conspired with the defendant law firms to **go down the highway disguised as moneylenders** to plaintiff while exhausting plaintiff's total assets/services for $5\frac{1}{2}$ years, repeatedly refused to fairly incorporate, and took plaintiff's total private properties/liberties for private and public use under false pretenses with no compensation -- in violation of the federal laws and **constitution.**

15. The 4 defendant law firms conspired with the 3 Johnsons defendants and 1965-1988 committed continuing frauds upon the plaintiff, the courts, and the United States while interfering with plaintiff's civil rights in violation of the federal laws and constitution.

16. The State of Michigan and/or its officer/agents, including its court of appeals chief judge Danhof, conspired with the 3 Johnsons defendants and the 4 law firms to perpetuate said continuing frauds upon the courts, the plaintiff, and the United States and interference with plaintiff's civil rights by depriving plaintiff of his **basic fundamental constitutional entitlements of due process, equal/parental protection of the laws, and just compensation** for private properties/ liberties taken for public use under color of state law and in violation of the federal

laws and **Constitution Amendments 1,5,14.** Chief Judge Danhof committed both non-judicial and judicial torts in the continuous 1964-1989 chain of torts herein.

17. The U.S. District Attorney, by his silence, has declined to prosecute this sensitive matter.

18. Plaintiff and the class he represents have no plain, adequate, or complete remedy to redress the wrongs alleged and this suit is the only available means of securing relief and long-overdue **constitutional entitlements.** Plaintiff and the class he represents have been suffering, are now suffering, and will continue to suffer irreparable personal and property injury if no relief is granted against the defendants' unlawful acts and practices as set forth herein.

AFFIDAVIT * * *

9. That defendants Richard Gordon Johnson, his realtor Anthony J. Mark, and his Landman/Culver attorney William F. McNally purjured themselves during state courts proceedings;

10. That the above allegations of continuing **constitutional torts** and interfence with civil rights are with true facts;

11. That plaintiff never took full custody of the 3 Johnsons defendants' 9/64-7/70 contributions and their moneylender pretense/ disguise was false as was trial judge Piercey's ruling that the 3 Johnson defendants were money givers to plaintiff rather than moneylenders or joint venturers.

12. That the 3 Johnsons' 2/9/65-7/27/70 false money lenders pretense continued to operate up to the moment of their wrongful appropriation of the monumental partnership assets contibuted by the plaintiff re People v. Jones, 224 P2d 353,357 (1950).

13. That plaintiff has yet to learn exactly who took legal title to plaintiff's $40,000-$1,000,000-valued Kandy Tapes & Records Corp. assets contributed to said venture; and

14. That **plaintiff has never been compensated for any part of the venture** as described on

the attached 5th Amended Complaint. * * *

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
DONALD EDGAR JOHNSON
Plaintiff,
vs Circuit Court File C-7432
CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, and CARL ALFRED JOHNSON, JR., jointly and severally,
Defendants. FIFTH AMENDED COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACTS, CONVERSION OF REAL ESTATE PROPERTIES AND POSSESSIONS, LIBEL AND SLANDER

* * * WHEREFORE, the Plaintiff claims damages under Counts I, II, III hereof in the sum of * * * $2,026,046.00."

Judge Gibson (1) entered his frauds-begotten 12/19/90 Judgment granting defendants' motions for undeserved 11th Amendment immunity and undeserved res judicata summary disposition of nonlawyer Don's federal question-conspiracy to interfere with civil rights class action complaint, (2) issued frauds upon the courts in attempts to dismiss the entire action, (3) refused to 28 USC § 455 disqualify himself in 1994 despite Don's 28 USC § 144 affidavit, and (4) secretly-from-Don transmitted the 1990-95 record (including said affidavit and much of Don's original evidence filed in the 1974 partial Muskegon County trial) to Chicago archives rather than allow it to be transmitted to court of appeals' case No. 96-1829.

Said Court of appeals case No. 96-1829 affirmed District Judge Gibson's denial of relief and denied rehearing en banc before Don learned that the 1990-95 record had been sent to the archives rather than to the court of appeals.

The United States Congress has

authorized 3-judge district courts for ensuring vindication of federal constitutional rights where state forums are inadequate. 28 U.S.C. §§ 2283 & 2284. Hernandez v. Finley, Infra.

And it has authorized disqualification of inadequate not impartial district judges. 28 USC § 144.

And a civil rights action brought under 42 USCS § 1983, authorizing suit in equity to redress deprivation under color of state law, of federal constitutional rights, is an express statuary exception to 28 USCS § 2283. Trainor v. Hernandez, infra.

And Don contends that his civil rights action brought under 42 USC § 1985, authorizing suit for conspiracy to interfere with civil rights, should also be an express[n3] statuary exception to 28 USCS § 2283.

But Judge Gibson (1) erroneously stated that he was not biased and did not deny due process, (2) adopted the magistrate's 1997 Report and Recommendation to reject Don's "post-four fruitless appeals" pleadings for FRCVP 60(b)(6); 28 USC §§ 144, 2283, 2284 relief including an application for a 3-judge court, (3) refused to return the 1990-95 record

[n3] The deft State And State Judge pleaded 11th Amendment immunity; deft Culver and O'Toole law firms - derivative law firms of Landman and O'Toole firms that perpetrated the confidence game -- represented dual conflicting interests; Culver firm filed deceptive Dossier of evidence with motions to dismiss; and the O'Toole firms (1) misrepresented that the Dossier contained "all" judgments, not excluding over 20 state judgments procured and prolonged by law firms' frauds & undue influence upon courts; and (2) LIED that they had nothing to do with perpetration/perpetuation of the 1964-to-date confidence game-threat of violence taking of Don's private properties.

-- including Don's preponderance of evidence -- to district court files, (4) refused Don's written motion to schedule a hearing to review his 1964-97 constitutional claims and determine if there should be a 3-judge court, (5) 8/13/97 scheduled a so-called "evidentiary" hearing to determine why Don should not be held in contempt of court for filing an application for a "no magistrate-3 judge district court"[n4] directly to the District Court rather than to the magistrate,[n5] and (6) 9/30/97 adjourned the contempt hearing temporarily pending outcome of Don's 8/25/97 appeal.

And the Court of Appeals for the 6th Circuit 2/10/98 refused 28 USC §§ 636(c)(4)(5), 1651, 2283, 2284 jurisdiction of the District Judge's denial of Don's request for FRCP 60(b)(6), 28 USC §§ 144, 2283, 2284 relief of a scheduled hearing to review Don's constitutional claims for a possible 3-judge court, because Don "has not been held in contempt nor have sanctions been imposed".[n6] Rehearing was denied on 4/23/98, and Don's motion to stay the 5/8/98 mandate was denied on 5/8/98.

[n4] "In contempt proceeding for failure to comply with court order, contemnor has defense if it is factually impossible to comply with order." U.S. v. State of Tennessee (1995 WD Tenn) 925 F Supp 1292,1294.

[n5] Don's application for 3-judge court was rejected for filing both before and after he sought magistrate judge's leave to file.

[n6] Additionally, the Court of Appeals was where one of the perpetrator-perpetuators of state agents' continuing 1964-to-date chain of frauds upon the courts confidence game was then-Atty Albert J. Engel, Jr. n/k/a 6th Circuit Judge Albert J. Engel. He was an unqualified decisionmaker of an erroneous 12/23/92 Order

ARGUMENT OF REASONS FOR GRANTING THIS PETITION

I. A UNITED STATES COURT OF APPEALS HAS ENTERED A DECISION TANTAMOUNT TO APPROVING AN UNQUALIFIED DISTRICT JUDGE'S REFUSING TO STOP PLAINTIFF'S FORMER LAW FIRMS' DERIVATIVE FIRMS' DUAL REPRESENTATION OF NIGHTCLUB'S SELLERS AND FAMILY JOINT VENTURERS-DISGUISED-AS-MONEYLENDERS BUYERS, CONDONING STATE'S IMMUNITY FROM JUST COMPENSATION OBLIGATION, ATTEMPTING TO DISMISS ACTION BY FRAUDS UPON COURTS, AND DENYING APPLICATION FOR A 3-JUDGE COURT FOR VINDICATION OF FEDERAL CONSTITUTIONAL RIGHTS IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

The United States court of appeals for the Sixth Circuit has entered a 2/10/98 decision approving an unqualified district judge's: (1) dismissing the complaint, then obstructing justice by covering up the 1990-95 record/evidence/affidavit for judge's disqualification in attempt to dismiss the action; (2) denying a post-four interlocutory appeals' request for FRCVP 60(b)(6); 28 USC §§ 144, 2283, 2284 extraordinary inequitable circumstances relief; (3) denying a "swindled by state agents" nonlawyer public servicer and a class of past, present, and future similar victims' written request for a hearing to review constitutional claims for possible 3-judge court pursuant to Acts of Congress; (4) scheduling a contempt hearing instead; and (6) staying that contempt proceeding

n6 affirming Judge Gibson's decision. And the Court of Appeals (1) failed to docket Don's 4/29/98-mailed Objections, and (2) kept failing to refere to the Landman and Culver law firms as two separate law firms, inter alia.

pending appeal to the court of appeals.

And in a way that conflicts with this long list[n7] of this Supreme Court's decisions:

n7 Bounds v. Smith, 52 LEd2d 71; Bros. Inc. v. W.E. Grace Mfg. Co. 15 LEd2d 852; Bullock v. U.S., 88 LEd2d 901; Chambers v. NASCO, INC., 88 LEd2d 901; Chicago B. & Q. R. Co. v. Chicago, 41 LEd2d 979; Crites, Inc. v. Prudential Ins. Co. of America, 88 LEd 1356; Great Coastal Express, Inc. v. Int' Brotherhood of Teamsters, 74 LEd2d 978; Haines V. Kerner, 30 LEd2d 552; Hazel-Atlas Glass Co. v. Hartford-Empire Co., 88 LEd2d 1250; Hensley v. Eckerhard, 76 LEd2d 40,43; Hernandez v. Finley, 59 LEd2d 765; Injunction of State Proceedings, 66 LEd2d 903; Jungersen v. Axel Bros., Inc., 99 LEd 1267; Kearns v. Fred Lavery Porsche Audi Co., 83 LEd2d 971; Koster v. Lumbermens Mutual Cas. Co., 91 LEd 1067,1068; Liljeberg v. Health Servicers Acquisition Corp., 100 LEd2d 855; Moffett v. Robbins, 80 LEd 1397; Re Murchison, 99 LEd 942; State Judgments-Federal Courts, 72 LEd2d 911,921; Trainor v. Hernandez, 59 LEd2d 765; Trotter v. Intern. Longshoremen's & Warehousemen's Union, 51 LEd2d 585; and Webb's Fabulous Pharmacies, Inc., et al v. Bukwith, 66 LEd2d 938,939.

II. AT THE ONSET OF PRO SE NONLAWYER PUBLIC SERVICER'S FEDERAL QUESTION-CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS CLASS ACTION PRETRIAL PROCEEDING, THE DISTRICT COURT SHOULD STOP STATE AGENT PERPETRATOR LAW FIRMS' DERIVATIVE FIRMS FROM DUAL REPRESENTATION OF PUBLIC NIGHTCLUB SELLERS AND NONLAWYER'S FAMILY JOINT VENTURERS-DISGUISED-AS-MONEYLENDERS BUYERS THAT ALLEGEDLY CONDONED PERPETRATION AND PERPETUATION OF THEIR CONTINUING CHAIN OF FRAUDS AND UNDUE INFLUENCE UPON COURTS IN THEIR "JOINT VENTURE BAIT AND SWITCH TO MONEYLENDER" CONFIDENCE GAME-THREAT OF VIOLENCE-TAKING OF TOTAL PRIVATE PROPERTIES PURSUANT

TO STATE LAW FOR PUBLIC AND PRIVATE USE WITHOUT REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, OR JUST COMPENSATION.

Of the four deft law firms, two are 1964 confidence game perpetrator law firm partnerships which represented plaintiff and the deft 3 Johnsons buyers while representing sellers (1) of nightclub land, and (2) of liquor license.

One is deft 1964-83 perpetrator Landman partnership. The other is the deft O'Toole partnership a/k/a perpetrator Engle & Engel in 1964-67.

The Culver partnership, a derivative of the perpetrator Landman partnership, represents two of the deft 3 Johnsons.

The O'Toole P.C., a derivative of perpetrator O'Toole partnership, represents the FMB Lumberman's Bank f/k/a Lumberman's Bank which representes deft 1986-deceased Carl A. Johnson-Sr's $450,000+ estate.

Perpetrator deft Atty O'Toole LIED that he did not 1/6/65 redraft perpetrator then-attorney (now 6th Cir. Court of Appeals Judge) Albert J. Engel's 1/6/65 draft of Amendment to Liquor License Sales Agreement thereby helping to disguise the deft 3 Johnsons joint venturers as moneylenders to plaintiff Don-with nightclub land mortgage for the purpose of putting liquor license in Don's name "temporarily" until "quick" incorporation of the nightclub purchase venture.

In 1990, the Culver and O'Toole firms filed motions to dismiss Don's complaint and "switched" their deceptive incomplete list of 1964-89 court decisions for Don's preponderance of evidence in both the 1990 district court and the 1991 court of appeals.

The District Judge refused to stop derivative deft law firms' dual

representation of the nightclub **sellers** and the 3 Johnsons joint venturers-disguised-as-moneylenders (by perpetrator law firms) **buyers**.

There were FRCVP 60(b)(6); 28 USC §§ 144, 636, 1291, 2283, 2284 grounds for court of appeals' reviewing the District Judge's 1997 decision(s).

> "A former client seeking to disqualify an attorney who appears on behalf of his adversary, need only to show that matters embraced within pending suit are substantially related to matters or cause of action wherein attorney previously represented him." General Elect. Co. v. Valeron Corp. (608 F2d 265, cert den 100 S Ct 1318, 445 US 930, 63 LEd2d 763.
>
> "A motion to disqualify counsel is the appropriate remedy for dual representation and the onset of litigation is the proper time for presentation of such motion." Int'l Brotherhood of Teamsters, Etc. v. Hoffa (1965 DC DC) 242 F Supp 246.
>
> > "Potential, no less than actual, conflict disqualifies counsel from serving in a double capacity." Id.
>
> "Propriety of attorney's conduct in dual representation is measured not so much against similarities in litigation, as against duty of individual loyalty which attorney owes to each of his clients. ABA Code of Prof. Res. DR 5-105(B)." Picker Intern Inc. v. Varian Associates, Inc. [1989 C.A.Fed.(Ohio)] 869 F2d 578.
>
> "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge (1976) 424 US 319,333, 96 S Ct 893,902, 42 LEd2d 18.

III. A STATE AND IT'S BAD FAITH AGENTS ARE NOT 11TH AMENDMENT IMMUNE FROM JUST COMPENSATION JOINT OBLIGATION AND ACCOUNTABILITY WHO SWINDLED NONLAWYER PUBLIC SERVICER TO INDIGENCY, THEN IN INADEQUATE FORUMS KEPT INTERFERING WITH REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, AND JUST COMPENSATION FOR PRIVATE PROPERTIES/POWER OF ATTORNEYS TAKEN FOR PUBLIC USE PURSUANT TO STATE LAWS.

"The just compensation clause of the Fifth Amendment was designed to bar gavernment from forcing some people alone to bear public burdens which in all fairness and justice, should be borned by the public as a whole." National Board of Y.M.C.A. v. U.S. (1969) 3j95 US 85, 25 LEd2d 117, 89 S Ct 1511.

"The Fifth Amendment's command that private property shall not be taken for public use without just compensation is obligatory on the states." Webb's Fabulous Pharmacies, Inc., et al v. Bukwith (1980) 66 LEd2d 938,939.

IV. ALL NONLAWYER PUBLIC SERVICERS WOULD HAVE A COMMON INTEREST IN PREVENTING UNCONSTITUTIONAL CONFIDENCE GAME-TAKING UNDER THREAT OF VIOLENCE OF THEIR SUBSTANTUAL PRIVATE PROPERTIES FOR PUBLIC USE WITHOUT REASONABLE ACCESS, DUE PROCESS, EQUAL PROTECTION, OR JUST COMPENSATION PLUS LONGTIME UNLAWFUL CONSPIRING TO INTERFERE WITH CIVIL RIGHTS; AND FEDERAL QUESTION-CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS ACTION BROUGHT BY PRO SE NONLAWYER PUBLIC SERVICER WOULD BE MAINTAINABLE AS A CLASS ACTION AS TO QUESTION OF CONFIDENCE GAME-THREAT OF VIOLENCE-TAKING OF PRIVATE PROPERTIES FOR PUBLIC USE WITHOUT DUE PROCESS OR JUST COMPENSATION PLUS INTERFERING WITH CIVIL RIGHTS IMPOSED BY THE STATE'S BAD FAITH AGENTS WHO SWINDLE NONLAWYER PUBLIC SERVICERS TO INDIGENCY, THEN DISCRIMINATE

AGAINST THEM IN THE COURTS.

"[A]ll inmates would have common interest in preventing unconstitutional mail censorship, and civil rights action brought by plaintiff would be maintainable as a class action as to question of mail censorchip imposed by defendants." Preston v. Cowan (1973 DC Ky) 369 F Supp 14, affd in part and vacated in part on other grounds (CA6 Ky) 506 F2d 288.

"'Confidence Game' is term of art involving taking of money by fraud from victim by means of trick or deception after victim's confidence has first been secured through some false representation or deception." State v Carr 543 P2d 441,443, 112 Ariz 453.

"Order dening class certification may be altered or amended before decision on merits. FRCVP 23(c)(1), 28 USCA." Mallory v Eyrich (1991 CA6 Oh) 922 F2d 1373.

V. WHERE THE DISTRICT JUDGE KNOWINGLY COMMITTED FRAUDS UPON COURTS ALONGSIDE DEFENDANTS FOR ATTEMPTED PROCURING AND PROLONGING OF A DISMISSAL OF THE ACTION, COURT OF APPEALS SHOULD HAVE ORDERED THAT A REPLACEMENT DISTRICT JUDGE PROMPTLY RULE ON REQUESTS FOR DISCOVERIES, CLASS CERTIFICATION, DECLARATORY JUDGMENT, AND SUBSTANTIALITY OF NONLAWYER'S 1964-97 CONSTITUTIONAL CLAIMS FOR DETERMINING "MAGISTRATE-ONE JUDGE" OR "NO MAGISTRATE-THREE JUDGE" DISTRICT COURT INJUNCTIVE RELIEF; OR, IN THE ALTERNATIVE, THE CHIEF JUDGE OF THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT SHOULD HAVE CONVENED A THREE-JUDGE COURT.

See Const. Amends. 1,5,14; 42 USC § 1985(2)(3); 28 USC §§ 144, 636. 2283, 2284; FRCVP 60(b)(6).

"Rule 60(b) recognizes court's inherent power to grant relief from judgment where court has been subjected to fraud and fraud upon courtN is matter which is so grave that relief is afforded without regard to any time limitation." Great Coastal Express, Inc. v. Int'l Brotherhood of Teamsters, etc. (1980 ED Va) 86 FRD 131, 110 BNA LRRM 2052, 1 29 FR Serv 2d 1181. remanded without op (CA4 Va) 639 F2d 780, laterapp (CA4 Va) 675 F2d 1349, 110 BNA LRRM 2058, 93 CCH LC ¶ 13447, 33 FR Serv 2d 1234, cert den 45j9 US 1128, 74 LEd2d 978, 103 S Ct 764, 112 BNA LRRM 2280, 95 CCH LC ¶ 13933. (Emphasis added).

"The difference between sections 144 and 455 is that section 455 is selfl-executing, requiring the judge to disqualify himself for personal bias even in the absence of a party complaint. 'Recusal is mandated . . . only if reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned.'" Trotter v. Intern. Longshoremen's & Warehousemen's Union, 704 F2d 1141, 1144 (9th Cir. 1983). Accord Untitled States v. Cowden, 545 F2d 257 (1st Cir. 1976), cert. denied, 430 U.S. 909, 97 S.Ct. 1181, 51 LEd2d 585 (1977).

"'Fraud on the court' consists of conduct: (1) on part of officer of the court, (2) that is directed to judicial machinery itself, (3) that is intentionally false, wilfully blind to the truth, or in reckless disregard for the truth, that is positive averment or is concealment when one is under duty to disclose, that deceives court." Demjanju v. Petrovsky (1992 CA6 Ohio) 10 F3d 338.

"Rule 60(b)(6) applies in 'unusual and extreme situations where principles of equity mandate relief.'" Olle v. Henry & Wright Corp. (1990 6th Cir) 910 F2d 357,365.

"In proving damages relating to claim of conspiracy to deprive plaintiff of civil rights * * * plaintiff should have been allowed to present evidence of * * * injuries * * * and losses caused by those injuries sustained. * * * 42 USCA § 1985(2),(3)." Lenard v. Argento (1983 CA7 Ill) 699 F2d 874.

"[P]olitical discrimination is prohibited by Sec. 1985. * * * Sec. 1985 reaches discrimination based on political affiliation with racial overtones." Kearing v. Carey (1983 CA2) 706 F2d 377.

"Fraud upon the court doctrine allows federal court to vacate its own judgment upon proof that fraud has been perpetuated upon the court, courts inherently possess equitable power to preserve integrity of judicial process." U.S. v. Twitty (1995 CA6 Mi) 44 F3d 410.

"Motion for a new trial suspends finality of a judgment." Overbee v. Van Waters & Rogers (1985 CA6 Oh) 765 F2d 578."

> "Relief under Rule 60(b)(6) should be provided 'when substantial justicce will thus be served'." Id.

"[W]here the power of a court of original jurisdiction to set aside a judgment on the ground of fraud is properly invoked, such power is not affected by the fact that the judgment has been * * * affirmed by a reviewing court." Louisvile & N. R. Co. v. Paynter (1907) 124 Ky 520, 1-91 SW 915.

"[T]he Chief Judge of the U.S. Court of Appeals for the Sixth Circuit convened this three-judge court under 28 USC § 2284(b)." Good v.Austin (1992 E & WD Mich) 800 F Supp 551,553.

"They sought a declaratory judgment that Michigan's * * * is unconstitutional, prayed for injunctive relief, and requested the convening of a three-judge court under 28 USC § 2284(a)." Good v. Austin, Id.

"District Court should have invoked procedures for convening District Court of 3 judges, rather than assigning case to magistrate for trial and recommendation. * * * 28 U.S.C.A. §§ 636,2284." Amour v. Ohio, (1991 CA6 Oh) 925 F2d 987.

VI. AFTER RES JUDICATA PRETRIAL DISMISSAL OF COMPLAINT WITHOUT DUE PROCESS-EQUAL PROTECTION, FOUR FRUITLESS INTERLOCUTORY APPEALS INTERVENED BY UNQUALIFIED APPELLATE JUDGE-PERPETRATOR, AND UNQUALIFIED DISTRICT JUDGE CONDUCTED DE NOVO REVIEW OF OBJECTIONS THEN ENTERED JUDGMENT ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION TO DENY RELIEF OF A FIRST-EVER FEDERAL HEARING FOR POSSIBLE 3-JUDGE COURT WITH OR WITHOUT THAT DISTRICT JUDGE FOR VINDICATION OF FEDERAL CONSTITUTIONAL CLAIMS RESULTED FROM "NO ADEQUATE STATE FORUM"; THE JUDGMENT APPEALED FROM WAS A FINAL DECISION OF DISTRICT COURT, ENSURING COURT OF APPEALS' FRCP 60(b)(6); 28 USC §§ 144, 636, 1291, 2283, 2284 JURISDICTION.

Whether a class action is brought for 28 USC § 1331 federal question-42 USC § 1983 deprivation of civil rights or for 28 USC § 1331 federal question-42 USC § 1985 conspiracy to interfere with civil rights, the actionable conduct warrants an adequate forum for presentation of federal constitutional claims and vindication of rights.

A 28 USC 1331 federal question-42 USC 1985 conspiracy to interfere with civil rights action falls within an express statutory exception to the 28 USCS § 2283 prohibition of an injunction to stay

State court proceedings.

The District Judge should not have committed frauds upon the courts alongside defendant state and its bad faith agents' frauds upon the courts for dismissing the complaint and attempting to dismiss the entire action.

Plaintiff's objections to the 8/1/97 28 USC § 636 Report and Recommendation were: (1) that his "post-judgment four fruitless appeals" FRCVP 60(b)(6), 28 USC §§ 144, 2283,2284 pleadings with constitutional claims were rejected as frivolous without filing, (2) that there was no mention of 28 USC § 2284 which was printed 28 USC § "2844", (3) that it **LIED** that constitutional claims had already been reviewed and resolved, (4) that constitutional claims could not be filed without leave from a magistrate, (5) that a contempt hearing should be scheduled rather than a requested hearing on full 1990-97 record to review constitutional claims, (6) that Judge Gibson would not disqualify himself, (7) that the decisionmaker was the same Magistrate Judge Brenneman who refused to stop 1964 defendant perpetrator law firms' defendant derivative law firms from representaing dual conflicting interests at the onset of proceedings, (8) that the district court would not vacate its 12/19/90 Judgment and 4/17/92 Order on ground that fraud has been perpetrated upon the court. and (9) that proceedings were not expedited.

And after the district judge conducted a 28 USC § 636 de novo review of plaintiff's objections and entered judgment adopting the magistrate judge's report and recommendation to deny 28 USC § 2284 relief of a 3-judge court with or without that district judge for 28 USC § 2283 vindication of federal constitutional rights, the judgment appealed from was a final decision

ensuring court of appeals' FRCVP 60(b)(6); 28 USC §§ 144,636,1291,2283,2284 jurisdiction.

"Appeal from decision of one-judge district court refusing to request convening of three-judge court and dismissing complaint lies to Court of Appeals. 28 USCA § * * * 2284." Jones v. Branigin (1970 CA6 Mich) 433 F2d 577, cert. den. 401 US 977, 28 LEd2d 327, 91 S Ct 1205.

"Appellants seek review by this Court of the refusal by the District Court to convene a three-judge District Court pursuant to 28 USC §§ 2281-2284. We have held that such review is available in the Court of Appeals * * * and not in this Court." Schackman et al v. Arnebergh 387 US 427, 18 LEd2d 865, 87 S Ct 1622, reh den 389 US 893, 19 LEd2d 204, 88 S Ct 16.

"[C]onstitutional claim was not subject to being left to state courts under doctrine of abstention where * * * procedures contained therein did not afford plaintiffs an adequate forum for vindication of federal constitutional rights." Hernandez v. Finley (1979 ND Ill ED) 471 F Supp 516; affd 440 US 951, 59 LEd2d 765, 99 S Ct 1488.

"Civil rights action brought under 42 USCS § 1983, authorizing suit in equity to redress deprivation, under color of state law, of federal constitutional rights, is express statuary exception to 28 USCS § 2283." Trainor v. Hernandez (1977) 431 US 434, 52 LEd2d 486, 97 S Ct 1911, on remand (ND Ill) 471 F Supp 516, aff'd 440 US 951, 59 LEd2d 765, 99 S Ct 1488. Accord, Injunction of State Proceedings, 66 LEd2d 903.

"[T]he Supreme Court held or recognized that the Civil Rights Act of 1871 (42 USCS § 1983) falls within the exception to the prohibition, contained in 28 USCS § 2283, of federal court

injunctions of state court proceedings. * * * [O]n remand * * * the court recognized that a civil rights action brought under 42 USCS § 1983 fell within an express statutory exception to 28 USCS § 2283, the court reversing a decision by a three-judge District Court in a civil rights class action on the ground that the District Court should have abstained, under principles of federalism and comity, from entertaining the action and should have dismissed the complaint." Injunction of State Proceedings 66 LEd2d 903, 917.

"De novo review of those portions of magistrate's report to which defendants filed objections was constitutionally and statutorily required. USCA Const. Art. 3, Sec 1 et seq.; 28 USCA Sec 636(b)(1)." U.S. v Shami (1985 CA6 MI) 754 F2d 670.

VII. 1964-94 STATE EVIDENCE PLUS 1990-95 FEDERAL EVIDENCE MUST BE TRANSMITTED TO DISTRICT COURT FROM STATE COURTS AND THE CHICAGO ARCHIVES.

The joint venture nightclub 1964-67 Ledger plus 1964-65 memos of collateral were received but not given detailed review at the 1974 partial trial then erroneously ordered removed from the file into Don's custody pending further proceedings. Don presented this evidence to District Court in 1990 direct from a bank vault. Only the tell-tale nightclub 1964-67 Ledger and 1964-70 memos of collateral in the joint venture were not received in District Court and Don subsequently filed them in the Muskegon Probate Court for supporting his claim against the defendant estate. This vital evidence was never properly reviewed by any judge nor provided any appellate review since 1964!

"State court exercises concurrent jurisdiction with federal district courts over cases arising under both sections of Civil Rights Act providing for civil action for deprivation of rights and section of Civil Rights Act relating to conspiracy to interfere with civil rights. 42 USCS §§ 1983,1985. Bennum v. Board of Governors of Rutgers, ETC. (1976 DC NJ) 413 F Supp 1274,1279, 12 BNA FEP Cas 1393, 123 CCH EPD § 10981.

"State and federal litigations are intended to be supplemental and cumulative." Amer. Pharmaceutical Ass'n v. U.S. Dept. of Justice, Antitrust Div'n (1971 DC Mich) 344 F Supp 9, affm'd 467 F2d 1290.

"[P]laintiffs brought this action alleging that they were bilked by Fletcher's confidence game." Davis v. Mutual Life Ins. of New York (1993 CA6 Oh) 6 F3d 367.

"Based on the jury's findings, the district court awarded the plaintiffs $3,587,274 in damages. The court adjudged each defendant jointly and severally liable for certain portions of the judgment, and apportioned liability for the remainder. Finally, the district court, finding authority in both RICO and the Ohio CSFA, awarded the plaintiffs $951,307.72 in attorneys' fees and expenses." Id.

VIII. 25-YEARS PRO SE NONLAWYER PUBLIC SERVICER WHO SUCCESSFULLY LITIGATED AGAINST DEFENDANTS' AND COURT JUDGE'S FRAUDS UPON COURTS WITHOUT DUE PROCESS-EQUAL PROTECTION SHOULD RECOVER SIX YEARS' CIVIL RIGHTS CLASS ACTION'S REASONABLE ATTORNEY'S FEE AND EXPENSES UNDER CIVIL RIGHTS ATTORNEY'S FEES AWARD ACT OF 1976 (42 U.S.C.S. § 1988).

See 42 USC § 1988.

In 1990-97, pro se nonlawyer expended $14,680 for copying, $2,072 for court fees, and $413 for transcripts totaling

$16,837 just for partial expenses. And pro se nonlawyers should not be required to work for free; rather they should be entitled to at least token hourly fees where lawyers are entitled to reasonable hourly fees. That's ommon sense for a more level playing field.

> "A plaintiff must be a 'prevailing party' to recover attorneys' fees under Civil Rights Attorney's Fees Award Act of 1976 (42 USCS § 1988); plaintiffs may be considered 'prevailing parties' for attorneys' fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit." Hensley v. Eckerhard (1983 US) 461 US 424, 76 LEd2d 40,43, 103 S Ct 1933.

> "Cost may be awarded in civil rights action without regard for the State's 11th Amendment immunity even when the case is decided solely by looking to a federal statute, if there is a nonfrivolous constitutional claim providing a jurisdictional base. 42 U.S.C.A. § 1988, U.S.C.A. Const. Amend. 11." Smith v. Puett (1980 DC Tenn) 506 F Supp 134.

> "The United States Supreme Court hold allegations of a pro se complaint to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner 404 US 519, 30 LEd2d 552, 92 S Ct 594.

CONCLUSION

If certiorari is DENIED, the gangs of bad faith state agent lawyers and their greedy clients will watch whistleblower Don get charged with contempt of court, incarcerated, beat up, and killed in order that "his" children -- who are "owned" by the gangs -- take over Don's assets some of which have already have been used by way of another's "Donald E. Johnson" signature

as collateral for financing projects including TV/radio stations for influencing votes.

RELIEF

Don's motion that Chief Justice William P. Rehnquist recuse himself should be GRANTED because his brother-in-law, Attorney V.S. "Sam" Laurin, was a participating member of defendant Landman law firm during 1964-83 perpetration-perpetuation of the confidence game against Don.

> "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings." 28 USC § 455(a)(b)(1).

This Court should reverse court of appeals' 5/8/98 denying pro se nonlawyer's filed motion to stay the 5/8/98 mandate allowing contempt hearing for failure to observe one-judge court mandates to precede written-requested first-ever hearing to review his constitutional claims within his application to convene a 3-judge district court. 28 USC §§ 2283,2284.

The Court should also consider the following three options:

Option #1:

1. GRANT certiorari; and

2. Remand to Court of Appeals with Mandate (a) that State probate court transmit nonlawyer's 1974 partial trial's nightclub ledger plus memos of collateral in the venture to District Court, (b) that District Court transmit the full 1990-95 record No. 1:90 cv 175 to District

Court from Chicago archives, and (c) that a District Court hearing for reviewing constitutional claims shall be immediately scheduled for determining if a 3-Judge District Court shall be convened BEFORE rescheduling the 10/6/97 contempt hearing.

OPTION #2:

1. Grant certiorari;

2. Remand to Court of Appeals with Mandate (a) that State probate court transmit nonlawyer's 1974 partial trial's nightclub ledger plus memos of collateral in the venture to District Court, (b) that the District Court transmit the full 1990-95 record No. 1:90 cv 175 from Chicago archives, and (c) that the Chief Judge of the Court of Appeals for the Sixth Circuit expediently convene a 3-judge district court minus Court Judge Gibson for pro se nonlawyer public servicer's vindication of his federal constitutional rights where state court forums were inadequate; and

3. Declare that the State and its bad faith agents must award pro se nonlawyer public servicer 1991-97 expenses and reasonable attorney fees totaling a mere $62,000 minimum within 60 days.

OPTION #3:

1 ACKNOWLEGE that the 75 years old nonlawyer public servicer has never been compensated for his phono records-music publishing assets, his homestead, his cash reserves, his 6 years-100 hours per week of skilled labor, his 25 years of pain-suffering litigating against near-insurmountable odds; and

2. DECLARE THAT THE STATE OF MICHIGAN AND ITS BAD FAITH AGENTS SHALL SIMPLY PAY PRO SE NONLAWYER PUBLIC SERVICER "JUST" COMPENSATION OF A MINIMUM OF $1,500,000 WITHIN 90 DAYS FOR MORE PROPERLY CLOSING THIS 1964-98 MATTER!

CERTIFICATE

I, Donald Edgar Johnson, do solemnly swear: (1) that I will conduct myself uprightly and according to law; (2) that I will support the Constitution of the United States; and (3) that relief is not available in any other form or any other court.

Executed on June 16, 1998.

DONALD EDGAR JOHNSON, In Pro Per 25 YEARS!
Counsel For Petitioners
1657 S. Getty St./Motorhome
P.O. Box 5407
Muskegon, MI 49445
Phone Installation Available

APPENDIX

APPENDIX A: 1990-98 CHRONOLOGICAL OPINION, ORDERS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW ENTERED IN CONJUNCTION WITH THE 4/17/90-TO-5/8/98 ORDERS TO BE REVIEWED:

2/27/90 Federal Original Complaint. DC Docket No. 1.

3/21/90

"MOTION by deft Richard Gordon Johnson, Carl Alfred Johnson Jr & Culver Lague and McNal to dismiss w/brief in support, notice of hearing to be set & proof of svc * * * **EXHIBITS in support of motion to dismiss** dated 3/21/90..." DC Docket Nos. 4,5.

3/21/90 Said Exhibits Filed In Support Of Defendants' Motion To Dismiss Were Defendants' Deceptive Dossier Of "Eighty Orders That Have Been Issued By Seven Different Courts" Because It Excluded The Following Pertinent Orders Including Infirm Blatant FRAUDS UPON THE COURTS ORDERS:

6/20/70: Joint venturer Deft Richard Johnson, who was Deft Landman law firm partnership-disguised as a moneylender, sued Don using unlawful 4/15/65 confidence game documents locked away in Deft O'Toole partnership for nine years, 4/65-5/74.

2/26/75: Muskegon Circuit Court judge James F. Schoener -- Deft Danhof's law firm partner, who also perpetuated the confidence game in 1970, struck Don's 1973 complaint at a hearing where Don raised federal Constitutional claims.

12/9/74 Judge Piercey Opinion that there was never a joint venture then **walking off the bench before the trial was ended!!**

1975-85: Several interlocutory petitions for certiorari to Michigan appellate courts plus U.S. Supreme Court.

1/26/82: Deft Landman partnership's Chief Justice William Rhenquist's brother-in-law Attorney V.S.Laurin, Jr.'s using Don to evade

nightclub sellers' $25-30,000 federal taxes Was Ignored.

2/11/82: County Circuit Judge John H. Percey (1) denied a new or partially-new trial, (2) re-refused to amend 1974 Partial Trial's findings first filed in 1979, and (3) denied certification that pltf's appeal was nonfrivolous because "pltf failed to prove that he was ever on a joint venture with defendants and this Court's decisions were correct".

4/20/83: Michigan Supreme Court DENIED leave to appeal 1/26/83 Court of Appeals order denying relief for Don's #73-C7432-CK motion for relief from 12/9/74 judgment on ground of frauds upon the courts action.

5/10/83: Muskegon Circuit Court's Trial Judge Replacement #1 Pannucci CANCELLED his due process "fraud upon courts' evidentiary hearing because of deft Landman firm's 5/6/83 FRAUD UPON THE COURT and UNDUE INFLUENCE

5/26/83: County trial judge replacement #2 Kobza erroneously mandated that only appellate courts could empower a due process evidentiary hearing to determine if the 12/9/74 judgment was procured and prolonged by frauds upon the courts.

6/29/83: County Judge Kobza erroneously opined that Don's case had been provided an appeal and erroneously ordered Don to remove his preponderance of evidence from the files even while the case was pending on appeal.

8/3/83: Kobza's certified statement of 5/2-8/3/83 events affirming that Don's $5,000 peacemeal-filed full transcripts were never reviewed by an appellate court. Judge Kobza threatened Don with contemt of court if Don even attempted to file a motion for a new/partially-new trial grounded on frauds upon the court. And trial court never returned Don's affidavit of 12 frauds upon the courts grounds for a new trial.

11/29/83: Court of Appeals would allow Don to file an independent action for relief from 12/9/74 judgment on ground of frauds upon the courts.

2/15/84: Kobza blocked Don's court of appeals-required independent civil action because it was a criminal action that could only be filed by the prosecutor.

8/21/86: Muskegon Probate Court Order determining $10,637 tax to be paid for deft Carl-Sr estate.

5/11/87: Muskegon Probate Court Order allowing Idemnification Agreement.

6/2/87: Muskegon Probate Court Order allowed $300,000 partial distribution of the undervalued $448,010 deft Carl-Sr estate -- including a confidence game perpetrator and representative of the FMB-Lumberman's Bank which represented the Estate: Deft Atty O'Toole.

4/29/88: On ground of Deft Judge Danhof's 3/3/88 Order granting unqualified deft O'Toole and deft Culver law firms' motion for summary disposition of res judicata, the County Probate Court allowed second annual and third and final accounts of personal representative, dismissed Don's $500,000+ claim, allowed fees of fiduciary and of attorneys, paid partial distribution, discharged surety bond, assigned residue, and closed the estate.

3/29/89: Michigan Supreme Court denied reconsideration of the 2/2/89 order denying relief for Don's consolidated #73-C7432-CK contract-motion for new trial plus #86-21207CZ independent action for relief from 12/9/74 judgment on ground of frauds upon the courts.

4/17/90 District Judge Benjamin F. Gibson Granted Don's Motion To Extend Time To Reply To 7 Defendants' Motions For Dismissal And Summary Judgment:

"U.S. DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION FILED 4/17/90

DONALD EDGAR JOHNSON,

Plaintiff, HON. BENJAMIN F. GIBSON

v. FILE NO. 1:90 CV 175

RICHARD GORDON JOHNSON, et al.,

Defendants. ORDER

At a session of the Court held in and for said District and Division in tghe City of Grand Rapids, Michigan, this 17th day

of APRIL, 1990.

PRESENT: HON. BENJAMIN F. GIBSON, DISTRICT JUDGE

This matter having come before the Court pursuant to the Plaintiff in Pro Per's Motion for More Time to Reply filed by plaintiff, and the Court having reviewed said motion and othewise being fully advised in the premises;

IT IS HEREBY ORDERED that said request is GRANTED. The plaintiff has until April 30, 1990 to file his reply to defendants motions for dismissal and summary judgment.

IT IS SO ORDERED. s/BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE".

6/7/90 Don Was Ordered To Proceed On His 4th Amended Complaint:

U.S. DISTRICT COURT-WESTERN DISTRICT OF MICHIGAN-SOUTHERN DIVISION FILED 6/7/90

DONALD EDGAR JOHNSON,

Case No.1:90-CV-175

Plaintiff, Hon. Benjamin F. Gibson

V.

RICHARD GORDON JOHNSON, et al,

Defendants.

ORDER GRANTING PLAINTIFFS' MOTION TO FILE FOURTH AMENDED COMPLAINT

"Plaintiffs having filed a motion to proceed on plaintiffs' proposed fourth amended complaint and the Court having heard arguments thereon,

The motion to file a fourth amended complaint is GRANTED pursuant to Hearing dated June 4, 1990. FRCP 15.

IT IS SO ORDERED.

Entered 6/5/90. s/Hugh W. Brenneman, Jr., United States Magistrate" (Emphasis added).

6/25/90 Magistrate's Refusal At The Onset Of Pretrial Proceeding Of Plaintiffs' 5/18/90 Motion To Stop Culver and O'Toole Law Firms' Dual Representation Of (1) Public Nightclub Sellers, And (2) Don's Father And Two Brothers (Three Johnsons) Joint Venturers-Disguised-As-

Moneylenders Buyers -- While Granting Defendants' Motions For Protective Orders Staying Don's Requests For Admissions Until District Judge Ruled On Respondents' Motions To Dismiss:

"...[p31]MR. EVEN: [W]hat's happening right now is a complete re-litigation or attempt to do so by Mr.Johnson of the 1973 lawsuit. Everything that he has now presented to the Court was essentially his claim back in 1973 before Judge Pearcy (ph) when an order was entered dismissing his case * * *

[p35]MR. O'TOOLE: * * * Nobody your honor, in the O'Toole, Johnson, P.C., or in the O'Toole, Stevens partnership which existed before the professional corporation was formed, nobody then and now knows anything about or had anything to do with this entire transaction, let alone represent the conflicting interests by representing the interests of the Plaintiff and the interest of any of the Defendants, nor were any of those persons in the -- that is, the former partnership or in the P.C. a witness to any of the incidents that occurred 'way back in 1964 and 1965." * * *

[p60]MR. JOHNSON: 598 is a list of joint decisions that were made by the Defendants and the Plaintiffs (sic) to prove that they were on a joint venture. The same with 599. * * * And then there's the merger of the local law firms in June 12, '69, the merger of the Landman, Grimm, Bradbury and Lauren -- * * * 605. * * * Then here's 610. There's the corporation proposal * * * prepared by the Landman firm, and there's the names of the four Johnsons buyers all on page -- that's exhibit -- Number 610. * * * It goes to 624. And the signature of Carl A. Johnson, Sr., is on that -- on one of those lines. * * * Then there's a letter from Al Engel who -- * * * 631 * * * tells about Hipkiss taking his place in 1973 * * * And then there's 632 in proof that the O'Toole -- rather Engel, O'Toole partnership retains the contracts, the land contracts and the liquor license

contracts, all kinds of documents. * * * Page 632 * * * written by -- William Hipkiss.

p62 THE COURT: No, Mr. Hipkiss didn't write this, Mr. Johnson. It says on the bottom, "The above documents were given to me by Attorney William Hipkiss." and it's signed by Donald Johnson. He didn't prepare this. You did.

MR. JOHNSON: Well, that's not my writing, your Honor. That's his writing. And it's my -- I wrote that last bit there.

THE COURT: Well the last bit is written in the same handwriting as the entire rest of the document with the exception of the signature, which is Donald E. Johnson. That's written in a different handwriting.

p63 MR. JOHNSON: Then there's the letterhead showing Fred Culver on 633, showing Fred Culver's name, the same name that was in the 1983 Landman letterheads that -- when the fraud was on the Court of May --

THE COURT: All right.

MR. JOHNSON: -- May 6th, '83, the fraud on the Court tha says the case is over and the Court doesn't have jursidiction, which is wrong. * * * I would like permission to leave the original and that copy with you and a copy to the Defendants. * * *

MR. O'TOOLE: Defendant O'Toole and Johnson law firm and the estate of Carl Johnson, deceased, have filed a motion asking for a protective order * * * relieving us of the obligation of replying to the seventh and eighth requests for admission until such time as the Court has decided the 12(b) motions that are and will be pending * * *

MR. JOHNSON: [T]he requests for admissions will help not hinder the Court's deciding on the motion to dismiss, and I have already cited the law -- laws showing why it should not be held up until after the decision on dismissal. * * *

MR. EVEN: * * * What he wants us to do is admit his case for him in these admissions.

MR. SWAN: * * * [O]n behalf of the State of Michigan and Judge Danhof, we have not yet

filed a motion for a protective order; however, we plan on doing that * * *

MR. JOHNSON: * * * I have 17 years sought justice and due process and my constitutional rights. They were denied in the state courts, and their decisions are not on the merits over there. And here we have a chance to expose evidence that's been withheld from the -- any judge in state or federal courts except to Judge Pearcy, who is deceased. No judge has ever seen the evidence. It -- the case involves five-and-a-half years, 100 hours a week with -- 100 hours, H-O-U-R-S, a week of hard service plus thousands of dollars invested. * * *

p73 THE COURT: * * * I will grant the motions to stay and will further stay any other discovery in this matter pending resolution of Judge Gibson's * * * decision on the motions to dismiss. * * *

MR. JOHNSON: And I'll prepare the motion -- or the order for motion to disqualify as you gave it.

THE COURT: I haven't ruled on that motion yet. I've taken that under advisement. Magistrate's 6/25/90 Hearing pp 31-74.

6/29, 7/3, 7/23/90 From A Bank Vault, District Court Accepted Plaintiff's Preponderance Of Hundreds Of Pages Of Evidence That Were Received At 1974 County Partial Trial Then WITHOUT DUE PROCESS 1983-Ordered Removed From State Files While Litigation Was Ongoing:

"SUPPLEMENT by plaintiff re motion to disqualify the Culver & O'Toole Law Firms defts from representing the 3 Johnsons deft * * * EXHIBITS 505,548,557 & 605 which should have attached to pltf's supplement filed on 6/29/90 * * * ADDITIONAL AUTHORITIES (EXHIBITS)..." DC Docket Entrees 75,76,82.

7/9/90 Magistrate's Order Postponing The Stopping Of Law Firms' Dual Respresentation While Granting Defendants' Motions For Protective Orders.

"ORDER (2 pgs) by Magistrate Hugh W. Brenneman

Jr. granting deft lawfirms' motions for protective order [53-1] [51-1] & taking pltf's motion to disqualify the Culver & O'Toole Law Firms defts from representing the Johnsons defts [45-1] under advisement and will be ruled on at such other time as deemed appropriate by the Court..." DC Docket No. 77.

12/5/90 District Judge Gibson's Dispositive Hearing:

"...Mr. Johnson * * * you have made your position clear today this morning. What I'm going to have to do is sort through the arguments and the record and the pleadings and the briefs and make a judgment on the various motions pending before the Court..."

12/19/90 District Judge's WITHOUT DUE PROCESS Opinion Based On FRAUD UPON COURT That Plaintiffs' Evidence Was Defendants':

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, Plaintiff, FILED 12/18/90
File No. 1:90-CV-175
Hon. BENJAMIN F. GIBSON

RICHARD GORDON JOHNSON, et al., Defendants.

OPINION

"...The plaintiff, apparently to support the merits of this action, has compiled for the Court what appears to be all of the orders entered by this court and others in response to his quizotic attempts to have the original circuit court decision vacated.[1] * * *

[1] The dossier contains eighty orders that have been issued by seven different courts." District Judge Gibson's 12/19/90-Entered **FRAUD UPON THE COURTS** Opinion, pp 2,5.

12/19/90 District Judge's FRAUD UPON COURTS C-O-M-P-L-A-I-N-T Dismissal Based Upon FRAUD UPON COURTS 12/19/90 Opinion That Defendants' Evidence Was Plaintiffs'. It Barred Attack Grounded On Extrinsic Fraud On County Circuit Court 1973-89 Pltf vs 3 Johnsons Case No. 73-C7432-CK

1974 Partial Trial's Dismissal Without Due Process Appeal Of Right-With Evidence Or Review Of Constitutional Claims, Denied All Of Pltf's Motions, And Granted Defts' Motions For 11th Amendment Immunity Plus Summary Res Judicata Disposition Of 4th Amended Complaint:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON,
Plaintiff,

FILED 12/18/90
File No. 1:90-CV-175
Hon. BENJAMIN F. GIBSON

RICHARD GORDON JOHNSON, et al.,
Defendants.

JUDGMENT

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 18th day of December, 1990.

PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE

In accordance with the Opinion dated December 18, 1990, IT IS HEREBY ORDERED that the defendants' motions to dismiss are GRANTED and the plaintiff's complaint is DISMISSED with prejudice.

IT IS FURTHER ORDERED that all motions filed by the plaintiff are DENIED.

IT IS FURTHER ORDERED that the Clerk of the United States District Court for the Western District of Michigan is ENJOINED from accepting from the plaintiff any pleadings or documents seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No. 73-7432-CK.

IT IS FURTHER ORDERED that the plaintiff is ENJOINED from filing any pleadings or documents seeking to collaterally attack the judgment entered by the Muskegon County Circuit Court in File No. 73-7432-CK. Failure to comply with this Order on the part of the plaintiff may result in a finding that he is in contempt of this Court.

IT IS SO ORDERED.

s/BENJAMIN F.GIBSON, U.S. DISTRICT JUDGE"

2/12/91 After Deft Culver Firm's Atty Kevin B. Even Refused To Participate In A Joint Appendix With Pltf, He Committed FRAUD UPON COURT OF APPEALS #91-1160 That Defendants Were Appellants And That Defendants' 3/21/90 Dossier Of Deceptive Evidence In The Form Of A Supplemental Appendix Was Plaintiff's:

"CULVER, LAGUE & McNALLY * * * February 12, 1991

Office of the Clerk

United States Court of Appeals for the Sixth

Circuit * * * Cincinnati, Ohio 45202

RE: Johnson vs Johnson

Docket No. 91-1160

Dear Sir/Madam: Enclosed please find our appearance and proof of service to be filed in the above captioned cause.

Sincerely, s/Kevin B. Even

cc: Craig Atchinson, Donald E. Johnson, Thomas J. O'Toole, Esq., Steve Kohl, Esq. * * *

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON Docket No. 91-1160

Plaintiff-Appellee,

vs.

RICHARD GORDON JOHNSON * * *

Defendants-Appellants. * * * PROOF OF SERVICE..."

7/29/91 Resulted Court Of Appeals' Erroneous Affirmation Of District Judge's So-Called "Action" Dismissal Based On Court Of Appeals' Erroneous Opinion That 12/19/90 Res Judicata Dismissal Was For Failure To State Claim:

"No. 91-1160

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON Filed 7/29/91

Plaintiff-Appellant

v. O R D E R

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON,

JR.; THE ESTATE OF CARL A. JOHNSON, SR.; THE LAW FIRM PARTNERSHIP OF LANDMAN, LATIMER, CLINK AND ROBB; CULVER, LAGUE AND MCNALLY; O'TOOLE, STEVENS, JOHNSON, KNOWLTON AND ROLF, STATE OF MICHIGAN, O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON AND EKLUND, P.C.; ROBERT J. DANHOF, Michigan Court of Appeals Chief Judge,

Defendants-Appellees.

NOT RECOMMENDED FOR FULL TEXT PUBLICATION * * *

BEFORE: KEITH and **NORRIS**:, Circuit Judges, and WEBER, District Judge.

Donald Edgar Johnson, a pro se Michigan citizen, appeals the district court's judgment dismissing his action filed pursuant to 42 U.S.C. § 1985 **for failure to state a claim.** * * * Seeking monetary relief, Johnson sued the estate of his father, his brothers, several law firms, and a state court judge. Johnson alleged that the defendants had conspired against him during various state and federal court proceedings. The district court determined that Johnson's claims were barred by res judicata and dismissed the case for failure to state a claim. Johnson has filed a timely appeal.

Upon review, we determine that the district court properly dismissed Johnson's case **for failure to state a claim.** Construing the complaint in the light most favorable to Johnson, and accepting all the factual allegations as true, we determine that Johnson undoubtedly can prove no set of facts in support of his claims that would entitle him to relief. * * * Accordingly, we affirm the judgment for the reasons set forth in the district court's judgment filed on December 18, 1990...

*The Honorable Herman J. Weber, U.S. District Judge for the Southern District of Ohio, sitting by designation." (Emphasis added).

1/21/92 Supreme Court DENIED Certiorari To 6th Circuit Court Of Appeals No. 91-1160 That Was Procured By Defendants' FRAUD UPON COURTS.

4/17/92 District Judge Gibson's FRAUD ON COURTS Order That 12/19/90 Judgment Dismissed The Case While DENYING DUE PROCESS-EQUAL PROTECTION FRCVP 60(b)(5(6) Evidentiary Hearing For Determining That The 12/19/90 Judgment Was Procured And Prolonged By Frauds Upon The Courts:

"...ORDER REJECTING PLEADINGS Judgment in this action was entered December 18, 1990 granting defendants' motion to dismiss the complaint. Plaintiff subsequently appealed to the United States Court of Appeals for the Sixth Circuit and the decision of this court was affirmed. The Supreme Court therafter apparently denied plaintiff's petition for a writ of certiorari, and on March 9, 1992, denied plaintiff's petition for rehearing.

Plaintiff now seeks to file in this court an emergency motion for an evidentiary hearing to determine if defendants perpetrated a fraud on the court(s) by mischaracterizing the nature of the plaintiff's evidence prior to the December 18, 1990 judgment and thereafter. Plaintiff has also attempted to file four supplements in his emergency motion which he seeks to file.

Plaintiff's emergency motion and the supplements to it will not be accepted for filing, since a final judgment has already been entered dismissing this action and the case is no longer pending in this or any other federal court, Rule 12(f), Federal Rules of Civil Procedure; W.D. Mich. L.R.24(b).

To the extent tha plaintiff may seek to construe this as a Rule 60(b) motion challenging this court's December 18, 1990 judgment, it is untimely. Such motions when predicated on 'fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party' must be made within one year. Rule 60(b), FRCP. The court notes that the plaintiff contends that he was prohibited from filing a motion to reconsider the December 18, 1990 judgment, at the time it was entered, due to the

injunctive language in the judgment prohibiting him from collaterally attacking a previous state court judgment. A careful reading of that language, however, clearly shows that it did not preclude plaintiff from taking further action under the Federal Rule of Civil Procedure regarding his federal case. (Indeed, if plaintiff really believed that he had been barred from filing anything further in regard to his federal case, he would not have filed the present motion).

Upon due consideration, plaintiff's motion and supplementary material are not accepted for filing in this court.

IT IS SO ORDERED. s/BENJAMIN F. GIBSON, Chief Judge".

12/23/92 Initial Court of Appeals #92-1829 Decision Showing: (1) Wrong Caption, and (2) 1964-67 PERPETRATOR 6th Circuit Judge Albert J. Engel Perpetuated The 1964-97 Ongoing Confidence Game By Intervening As Decisionmaker:

No. 92-1829

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON and Class of
Pro Se Nonlawyer Alleged
Confidence Game Victims,

FILED DEC 23, 1992
Leonard Green, Clerk

Plaintiff-Appellant,

V.

RICHARD GORDON JOHNSON, jointly and severally: CARL ALFRED JOHNSON, JR., jointly and severally; CARL A. JOHNSON, SR., the Estate of, jointly and severally; THE LAW FIRM PARTNERSHIPS OF LANDMAN, LATIMER, CLINK AND ROBB, jointly and severally; CULVER, LAGUE AND MCNALLY, jointly and severally; O'TOOLE, STEVENS, JOHNSON, KNOLWTON AND ROLF, jointly and severally; STATE OF MICHIGAN, jointly and severally; O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON AND EKLUND, P.C., jointly and severally; ROBERT J. DANHOF, Michigan Court of Appeals Chief Judge

Defendants-Appellees.

BEFORE: KENNEDY AND BATCHELDER, Circuit Judges

and **ENGEL**, Senior Judge.

"Plaintiff, Donald Edgar Johnson, a pro se Michigan citizen, moves for miscellaneous relief on appeal from three separate district court orders rejecting various pleadings filed subsequent to a final judgment entered December 19, 1990, dismissing plaintiff's civil action filed pursuant to 42 U.S.C. § 1985. Plaintiff also appeals an order from the Muskegon County Probate Court. Additionally, the defendants have filed motions to dismiss the appeal for lack of subject matter jurisdiction. The defendants also request costs and attorney fees. Plaintiff has filed a response. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Plaintiff initiated his civil action against the estate of the father, his two brothers, several law firms, and a Michigan state court judge, claiming that the defendants conspired against him through various judicial processes in the state and federal courts since 1974. The district court determined that plaintiff's claims were barred by res judicata and dismissed plaintiff's complaint for failure to state a claim. This court affirmed the district court's judgment in an order filed Jujly 29, 1991 and denied plaintiff's petition for rehearing en banc in an order filed September 2, 1991. On January 21, 1992, the United States Supreme Court denied certiorari.

Thereafter on April 27, 1991, the district court received a pleading entitled, "Emergency Motion For Change In Venue; And In The Alternative, To Alter The Order Denying A Rule 60(b)(6) Evidentiary Hearing Re Defendants' 1990-1992 Frauds Upon The Courts." On May 8, 1992, the district court entered an order rejecting the pleading for the reason that a final judgment had been entered dismissing plaintiff's action.

On May 12, 1992, the district court received a pleading entitled, "Supplement To Reply To Petition To Determining Distribution Has Been Made." The district court rejected this pleading in an order entered May 22, 1992, also for the reason that a final judgment had been entered dismissing plaintiff's case. Finally, on May 26, 1992, the district court received a pleading entitled, "Emergency Motion For Declaratory Judgment." On June 3, 1992, the district court entered an order rejecting this pleading for the same reason as stated in the print orders of May 8, 1992 and May 22, 1992.

We construe this appeal as an appeal from three separate district court orders denying plaintiff relief sought pursuant to Fed. R. Civ. P. 60(b). An abuse of discretion standard applies to a decision rendered under Rule 60(b). In re Sales Mortg. Co., 791 F.2d 456, 459 (6th cir. 1986); Smith v Secretary of Health and Human Services, 776 F.2d 1330, 1332 (6th Cir. 1985); Windsor v. United States Dep't of Justice, 740 F.2d 1330, 1332 (6th Cir. 1985); Windsor v. United States Dep't of Justice, 740 F.2d 6, 7 (6th Cir. 1984) (per curiam0; Reviewing courts will find an abuse of discretion in the denial of a Rule 60(b) motion only if there is a definite and firm conviction that the court committed a clear error of judgment. Davis v. Jellico Community Hospital, Inc., 912 F.2d 129, 133 (6th Cir. 1990). A Rule 60(b) motion cannot be used as a substitute for an appeal, and thus an appeal from an order denying Rule 60(b) relief does not bring up for review the underlying judgment. Browder v. Direct, Dep't of Corrections, 434 U.S. 257,263 n.7 (1978); Hopper v. Euclid Manor Nursing Home, Inc., 867 F.2d 291, 294 (6th Cir. 1989).

Upon review, we conclude that the district court did not abuse its discretion when it rejected plaintiff's post-judgment pleadings. In each of the submitted pleadings, plaintiff attempted to relitigate issues previously decided adversely to him. A final judgment

has been entered dismissing plaintiff's action, that decision has been affirmed by this court and a petition for certiorari has been denied by the Supreme Court. Thus, no clear error of judgment on the part of the district court exists in this case.

Additionally, the order from the Muskegon County Probate Court is not appealable to this court. Thus, we do not review that appeal.

For the foregoing reasons, the defendants' motions to dismiss and request for costs and attorney fees are denied, plaintiff's motions for miscellaneous relief are denied, and the district court's orders of May 8, 1992, May 22, 1992, and June 3, 1992 are affirmed pursuant to Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
s/LEONARD GREEN, Clerk"

1/5/94 In District Judge Gibson's So-Called "Closed" Case, He Mandated A Magistrate-One Judge Court Before Noticing Hearing To Review 1964-94 Constitutional Claims Shown In 4th Amended Complaint:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION FILED !1/4/94

DONALD EDGAR JOHNSON, File No. 1:90-CV-175
Plaintiff, Hon. Benjamin F. Gibson
v.
RICHARD GORDON JOHNSON, et al. MEMORANDUM OPINION and INJUNCTIVE ORDER
Defendants.

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 3rd day of January, 1994.

PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE

This matter is once again before the Court on plaintiff's recently filed pleadings (nos. 140,141, and 142) requesting the Court to issue summons forms and grant leave to file an amended complaint. An examination of the pleadings reveals that they were drafted by the pro se

plaintiff without so much as a clue as to what the law is governing modification of judgments under Rules 59 and 60. The pleadings make no effort to justify relief under these rules since they completely ignore their content. The plaintiff has made a habit of such filings. The plaintiff's complaint--which was filed on February 27, 1990--sought to reopen litigation that was previously exhausted in the state courts. The complaint was dismissed by judgment of this Court of December 18, 1990. The dismissal was upheld by the Sixth Circuit Court of Appeals by its mandate of October 15, 1991. Despite this fact, the plaintiff has continued to file various requests regarding the closed case since October 15, 1991. Since that date, the Court has rejected by separate orders some 15 pleadings filed by the plaintiff seeking relief to which he was not entitled. Plaintiff's continual filing of these pleadgins has placed an administrative burden on this Court, as well as the clerk's office. As the Supreme Court has noted, the courts have a responsibility to see that judicial resources are properly allocated and conserved. In re McDonald, 489 U.S. 180,184 (1989). Rule 11 also requires courts to sanction the filing of meritless pleadings. Although the courts are understandably more indulgent with pro se litigants, this indulgence has its limits. As the Fifth Circuit has noted, "That [a plaintiff's] filings are pro se offers [plaintiff] no impenetrable shield [to sanctions], for one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets" Farguson v. MBank Houston, N.A., 808 F2d 358,359 (5th Cir. 1986).

When faced with similar situations, other federal courts have enjoined further filings. See Farguson, supra; Kaufhold v. Cauthen, 152 Bankr. 149 (Bankr. S.D. Tex. 1992). Such action is authorized both under Rule 11 and the general power of the courts to protect themselves from abusive filings. Id. In Farguson, the Fifth Circuit approved an order enjoining the

plaintiff from filing further actions against the defendants based on matters set forth in the prior complaint. In Filipas v. Lemons, 835 F.2d 1145,1146 (6th Cir. 1987), the Sixth Circuit approved an even broader injunction prohibiting the filing of any lawsuit by the plaintiff without prior leave from the court. In making a determination as to the appropriate sanction, the Court is mindful that it should not unduly restrict plaintiff's access to court and should make its injunction as narrow and specific as possible. See Farguson, Supra.

Therefore, ITS IS HEREBY ORDERED tha plaintiff DONALD EDGAR JOHNSON's motions contained in pleadings no. 140, 141, and 142 are DENIED.

IT IS FURTHER HEREBY ORDERED that plaintiff DONALD EDGAR JOHNSON shall refrain from filing in this Court further complaints or pleadings relating to claims against the defendants made in this lawsuit (except for an appeal of this injunction, or any filing as to which the plaintiff first obtains leave from a United States Magistrate, which leave shall be granted if the accompanying request is not frivolous or made in bad faith).

IT IS FURTHER ORDERED that the clerk's office shall not accept from the plaintiff for filing further pleadings in this case (except for an appeal of this injunction, or in the event that plaintiff first obtains leave from a United States Magistrate). IT IS SO ORDERED."

s/BENJAMIN F. GIBSON, U.S DISTRICT JUDGE"

2/25/94 **In Related Matter**, Michigan Supreme Court 97521 Denied Leave To Appeal Dismissal Of Don's Estate Claim And Closing Estate, "Because We Are Not Persuaded That The Questions Presented Should Be Reviewed By This Court".

10/3/94 **In Related Matter**, Supreme Court No. 94-146 Denied Mandamus to Michigan Supreme Court No. 97521 To Stay State's 2/25-4/29/94

Dismissing Plaintiff's Carl A. Johnson, Sr. Estate Claim Pending Federal Proceedings.

11/8/94 District Judge Gibson Refused To Disqualify Himself Despite 10/11/94 Affidavit, Or Certify Constitutional Issue For 28 USC § 1292(b) Interlocutory Review At Court Of Appeals:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN-SOUTHERN DIVISION
DONALD EDGAR JOHNSON, File No. 1:90-CV-175
Plaintiff,
v
RICHARD GORDON JOHNSON, et al.,
Defendants.

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 4th day of November, 1994.

PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE.

"This matter is before the Court on the motion of plaintiff Donald Edgar Johnson to reconsider the Court's previous orders denying him relief under Federal Rules of Civil Procedure 59 and 60, to reassign this closed case to another judge, and to reconsider the Court's injunction prohibiting plaintiff from filing frivolous pleadings.

Plaintiff's asserted basis for such motions is that the undersigned judge is biased against him such that the case should be reassigned pursuant to Title 28 United States Code Sections 144 and 455. Plaintiff's only basis for so asserting is that the Court has repeatedly ruled against him as to the many motions he has filed. The record, however, supports that the Court has done so only because the motions were without merit and did not warrant relief. The record further supports the necessity of enjoining the plaintiff from filing further frivolous pleadings.

Therefore, the Court determines that there is no appropriate legal basis for reassignment of this closed case or for the other relief

requested.

Accordingly, plaintiff's motion (pleading no. 205) is DENIED. IT IS SO ORDERED. s/BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE"

6/27/95 6th Cir. Ct. Of Appeals 94-2305 Affirmed District Judge's Denial Of FRCVP 60(b)(6) Relief:

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED 6/27/95 No. 94-2305

DONALD EDGAR JOHSON, Plaintiff-Appellant,

V. O R D E R

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR.; ESTATE OF CARL A. JOHNSON, SR.; LAW FIRM PARTNERSHIPS OF LANDMAN, LATIMER, CLINK & ROBB: CULVER, LAGUE & McNALLY: O'TOOLE, STEVENS, JOHNSON, KNOWLTON & ROLF; O'TOOLE, JOHNSON, POTTER, ROLF, GRAFTON & EKLUND, P.C.; STATE OF MICHIGAN; ROBERT J. DANHOF, Michigan 'Court Of Appeals Chief Judge, jointly and severally, Defendants-Appellees.

NOT RECOMMENDED FOR FULL-TEXT PUBL * * *

"Donald Edgar Johnson, a pro se Michigan resident appeals a district court order denying his motion to set aside the court's previous orders filed pursuant to Fed. R. Civ. P. 59 and 60. The case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On December 19, 1990, the district court dismissed Johnson's civil rights complaint filed pursuant to 42 U.S.C. § 1985. Johnson's civil rights action arose from a dispute that Johnson had with his family in the mid-1960's. The dispute led to litigation and a trial in the state courts of Michigan. A judgment adverse to Johnson was ordered by the Michigan trial court in December 1974.

[NOTE-6/98 TO SUPREME COURT: THERE WAS ABSOLUTELY NO MENTION OF 1974-90 INTERFERING WITH DON'S CIVIL RIGHTS.]

Johnson appealed the district court's 1990 decision and this court affirmed the dismissal. Johnson v. Johnson, No. 91-1160, 1991 U.S. App.

LEXIS 17922, at *2 (6th Cir. July 29, 1991, cert. denied, 502 U.S. 1059 (1992). In 1992, Johnson moved to alter the 1990 judgment pursuant to Fed.R. Civ. P. 60(b,). The district court denied the motion and this court affirmed. Johnson v. Johnson, No. 92-1829, 1992 U.S. App. LEXIS 34749, at *4-5 (6th Cir. Dec. 23, 1992).

Johnson then filed numerous documents with the district court. A magistrate judge ordered that the documents be struck from the record as frivolous. Johnson moved the district court to reconsider the magistrate judge's decision. The district court denied the motion. Johnson then filed a Rule 59 motion for reconsideration of this decision and a Rule 60(bK) motion for reconsideration of the December 19, 1990 decision. The district court denied both motions as meritless.

In his timely appeal, Johnson's brief raises a plethora of issues. He requests oral argument and has moved the court to void a 1994 state court decison.

The court reviews the denial of Rule 60(b) motion for an abuse of discretion. See Williams v Browman, 981 F2d 901, 903 (6th Cir. 1992) (per curiam). A Rule 6)(b) motion may not be used as a substitute for an appeal, and thus, the underlying judgment is not reviewed. See Browder v. Director, Dept. of Correction, 434 U.S. 257,263 n.7 (1978). As for Johnson's Rule 59 motion, the court will consider the merits of the district court's order as this decision is subject to appellate review. Peabody Coal Co. v Local Union Nos. 1734, 1508 and 1534, UMW, 484 F2d 78,81 (6th Cir. 197), cert. denied after subsequent appeal, 430 U.S. 940 (1977).

Upon review, we conclude that the district court did not abuse its discretion in denying Johnson's Rule 60(b) motion. As Johnson is attempting to have the district court reconsider its December 19, 1990 order dismissing his civil rights complaint and that order has been affirmed on direct appeal and in a previous Rule 60(b) motion, the district court did not abuse its discretion to denying Johnson's second Rule 60(b) motion. As for Johnson's appeal of the denial

of his Rule 59 motion, it is clear that the pleadings in question were in fact frivolous and the district court did not err in affirming the magistrate judge's decision.

Johnson contends that the district judge was biased. The legal standard to establish judicial bias requires the facts to ber such as would convince a reasonable person that bias exists. See United States v Story, 716 F2d 1088,1090 (6th Cir. 1983). Johnson has presented no evidence, nor do the facts indicate, that the district judge was biased. The argument is meritless.

Finally, a court possesses an inherent authority to sanction a party who has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. Chambers v. NASCAO Inc., 501 U.S. 32, 43-46 (1991). Johnson's current appeal represents his third attempt before this court to vacate the 1974 state court judgment. Should Johnson continue to file frivolous appeals involving the 1974 decision, the court may impose sanctions against him.

Accordingly, we deny the request for oral argument, deny the motion to void the state court dismissal, and affirm the district court's order. Rule 9(b)(3), Rules of the Sixth Circuit."

2/96 U.S. Supreme Court No. 95-934 DENIED Certiorari To 6th Circuit Court Of Appeals No. 94-2305.

6/13/96 Dist. Judge Gibson Denied Don's Motion To Alter Or Amend His 5/22/96 Order Affirming Magistrate Judge's 3/17/96 Order Finding That Don's Motion For Leave To File For Rehearing Was Frivolous:

UNITED STATES DISTRICT COURT
WEST MICHIGAN-SOUTHERN DISTRICT
FILED 6/13/96 No. 1:90-cv-175

DONALD EDGAR JOHNSON, Plaintiff,
V, MEMORANDUM OPINION & ORDER
RICHARD GORDON JOHNSON et al., Defendants.

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 13th day

of June, 1996.

PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE

"Plaintiff moves to reconsider this Court's order of May 22, 1996, affirming the magistrate judge's order of March 17, 1996, entered March 18, 1996, finding that plaintiff's motion for leave to file an emergency motion for rehearing was frivolous.

Plaintiff argues that this Court wrongly decided the motion, that Judge Gibson should have disqualified himself, and that 'defendant state agent Landman law firm's representative' along with other defendants should share the cost of plaintiff's '1991-1996 interlocutory appeals including a reasonable attorney fee.' Plaintiff has not adequately presented any persuasive basis for reconsideration of this Court's order.

Accordingly, IT IS HEREBY ORDERED that plaintiff's emergency motion (pleading no. 243) to alter or amend is DENIED. s/BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE."

5/1/97 6th Cir. Ct. Of Appeals 96-1826/1979 Denial Of Appeal Of District Judge Gibson's 6/13/97 Denials.

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED 5/1/97 Nos. 96-1826/1979

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

V.

O R D E R

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR.; THE ESTATE OF CARL A. JOHNSON, SR.; THE LAW FIRM PARTNERSHIPS OF LANDMAN LATIMER CLINK ROBB CULVER LAGUE & MCNALLY; O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF; STATE OF MICHIGAN; O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND, P.C.;ROBERT J. DANHOF, Michigan Court of Appeals Chief Judge, Jointly and Severally, Defendants-Appellees.

NOT RECOMMENDED FOR FULL-TEXT PUBL * * *

"Donald Edgar Johnson appeals district court orders: (1) denying his motion for leave to file a motion for rehearing; and (2) denying a motion for reconsideration of that order.

These cases have been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App.

These appeals are plaintiff's fourth appearance before this court attempting to assert his claim filed pursuant to 42 U.S.C. § 1985 that defendants conspired to deprive him of his civil rights in state court proceedings. In 1991, this court affirmed the district court's judgment dismissing his complaint for failure to state a claim upon which relief can be granted. Johnson v. Johnson, No. 91-1160, 1991 WL 138458 (6th Cir. July 29, 1991), cert. denied, 502 U.S. 1059 (1992). In 1992, this court affirmed three orders of the district court denying plaintiff's motions for postjudgment relief. Johnsonv. Johnson, No. 92-1829, 1992 WL 392892 (6th Cir. Dec. 23, 1992). Most recently, this court affirmed another district court order denying plaintiff's additional motions for relief from judgment. Johnson v. Johnson, No. 94-2305, 1995 WL 385142 (6th Cir. June 27, 1995), cer. denied, 116 S. Ct. 918 (1996).

Moreover, the district court entered an order enjoining plaintiff from filing further pleadings relating to the claims asserted herein without first obtaining leave from a magistrate judge. Thereafter, plaintiff filed a motion for leave to file an "emergency petition for rehearing," which the magistrate judge denied. Plaintiff appealed the denial to the district court, and the district court affirmed the magistrate judge's order. Next, plaintiff filed an 'emergency motion to alter or amend' the district court's judgment affirming the magistrate judge's order, which the district court denied. Plaintiff filed a timely notice of appeal taken from the district court's judgment and the order denying his subsequent motion to alter or amend, which was docketed in this court as Case No. 96-1826. Four days after plaintiff filed his timely notice of appeal, plaintff filed his timely notice of

appeal, plaintiff filed an 'emergency' motion pursuant to Fed. R. Civ. P. 60(b)(6) for relief from the district court's judgment affirming the magistrate judge's order. The district court denied plaintiff's motion, and plaintiff filed an amended notice of appeal within 30 days of the district court's order, docketed in this court as Case No. 96-1979.

Generally, this court reviews the denial of a Fed. R. Civ. P. 60(b) motion only for an abuse of discretion. Williams v. Browman, 981 F2d 901,903 (6th Cir. 1992) (per curiam); McDowell v.Dynamics Corp., 931 F2d 380,383 (6th Cir. 1991). In pertinent part, Rule 60(b)(6) provides for relief from a judgment for any reason justifying relief from operation of the judgment not specified in other section of Rule 60, but the relief available under this residual provision should be afforded only in unusual circumstances where principles of equity mandate relief. Olle v. Henary & Wright Corp., 910 F2d 357,365(6th Cir. 1990). The district court's discretion to deny relief under this provision is particularly broad. McDowell, 931 F2d at 383. The district court's order affirming the magistrate judge's order refusing plaintiff leave to file his motion is tantamount to a denial of plaintiff's motion.

The district court did not abuse its discretion in affirming the magistratejudge's order on appeal in Case No. 96-1826. Plaintiff's latest efforts to reopen the case are not based on new grounds and were properly characterized by the district court as frivolous. With respect to the district court order denying plaintiff's Rule 60(b) motion on appeal in Case No. 95-1979, the district court had no jurisdiction to rule on plaintiff's Fed. R. Civ. P. 60(b) motion after the timely notice of appeal was filed. See Pittock v. Ottis Elevator Co., 8 F3d 325,327 (6th Cir. 1993).

The order denying relief therefore will be affirmed on this basis rather than on the merits. Further, it is noted that there is

no factual basis for plaintiff's contention on appeal that the district court should have recused itself from this case. See Liteky v. United States, 510 U.S. 540,550 (1994).

Finally, plaintiff is again warned that further appeals involving this subject matter may lead to sanctions including, but no limited to, an order enjoining such appeals in the future.

For the foregoing reason, the judgments of the district court are affirmed. Rule 9(b)(3), Rules of the Sixth Circuit."

8/1/97 Magistrate's 28 USC § 636 Report & Recommendation To Refuse To Schedule A "First Time" Hearing To Review Constitutional Claims Before Scheduling A Contempt Hearing For Filing 28 USC § 2284 Application For "No-Magistrate-Three-Judge Court" Without Magistrate's Leave. NOTICE THAT HE FRAUD UPON THE COURTS SUBSTITUTED "28 USC § 2844" FOR 28 USC §§ 2283,2284 IN FIRST PARAGRAPH:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON FILED 8/1/97
Plaintiff,
v. Case No. 1:90-CV-175
RICHARD GORDON JOHNSON, et al,
Defendants. Hon. Benjamin F. Gibson

REPORT AND RECOMMENDATION

This matter is before the court on plaintiff's attempted filing of (1) "supplement to plaintiffs' motion ...", (2) Plaintiff's motion (a) to correct five 7/157/16/97 orders and (b) for judgment on his 6/26-7/10/97 emergency pleadings, (3) Plaintiff's motions (a) to correct record to show 6/27-7/11/97 filings of Rule 60(b)(6) and 28 USC §§ 144,**2844** pleadings, and (b) to vacate on ground of frauds upon courts the magistrate's 7//15-7/16/97 orders rejecting those pleadings, and (4) a Rule 59(e) motion to alter amend, or vacate magistrate judge's 7/22/97 order. Neither the motions mor the supplement have been

accepted for filing because pursuant to the court's December 19, 1990 and January 4, 1994 orders (docket nos. 103 and 143 respectiely), plaintiff is required to obtain leave of court before he may file any additional pleadings in this action.

The court has reminded plaintiff in dozens of prior orders that final judgment has been entered in this case and it is closed. Plaintiff has filed at least four appeals to the Sixth Circuit regarding this action and, in a June 29, 1995 order, even that court threatened plaintiff with sanctions should he continue to file frivolous appeals.

The instant supplement and motions follow a stream of attempted filings byu plaintiff. The pleadings were rejected by the court because plaintiff had failed to obtain leave of court before filing them. Order Rejecting Pleadings (dock nos. 263-267). Thereafter, plaintiff filed a motion for leave to file the pleadings which had been rejected (docket no.268). The court denied leave because the pleadings were frivolous in that they raised issues which have been resolved in the judgment previously entered in this action or other final orders (docket no. 269).

In the supplement and the motions plaintiff asks the Court to accept all of his filings and to vacate the judgment and order which restrict his filings. It is apparent, however, that plaintiff ultimately seeks to vacate the judgment redered by the court over six years ago.

At this stage, simply rejecting the supplement or motions or denying leave to file them would appear to be futile gestures. Plaintiff has simply ignored such actions in the past and there is no reason to believe he would not do so again. Rather than simply starting the cycle again, I respectfully recommend that the district court enter an order rejecting the supplement and attachments and the motions as violative of the court's December 19, 1990 and January 4, 1994 orders and that the court schedule an evidentiary

hearing for the purpose of determining whether plaintiff should be held in contempt of court for his disregard of the court's orders.

Moreover, pending resolution of this matter, the clerk is directed to accept for filing any objections to this Report and Recommendation.

Entered 7/31/97

S/Hugh W. Brenneman, Jr.
U.S. Magisrate Judge

ANY OBJECTIONS to this Report and Recommendation must be served and filed with the Clerk of the Court within ten (10) days after service of the report. All objections and responses to objections are governed by W.D.Mich. L.R. 13(b). Failure to serve and file written objections within the specified time waives the right to appeal the District Court's order. Thomas v. Arn, 474 U.S. 140 (1985), United States v. Walter, 638 F2d 947 (6th Cir. 1981)."

8/13/97 Gibson reviewed objections de novo, adopted Magistrate's Report & Recommendation, and scheduled contempt hearing:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD EDGAR JOHNSON, FILED 8/13/97
Plaintiff, File No. 1:90-CV-175
Hon. BENJAMIN F. GIBSON

RICHARD GORDON JOHNSON, et al.,
Defendants. MEMORANDUM OPINION and ORDER

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 12th day of August, 1997.

PRESENT: THE HONORABLE BENJAMIN F. GIBSON
SENIOR UNITED STATES DISTRICT JUDGE

This matter is before the Court on plaintiff Donald Edgar Johnson's objections to the Magistrate Judge's Report and Recommendation dated July 31, 1997. The Court reviews de novo portions of reports and recommendations to which specific objection is made. See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C).

On December 18, 1990, this Court entered Judgment against plaintiff, thereby terminating this action. Pursuant to the Judgment and this Court's Order entered on January 4, 1994, (pleading nos. 103 and 143, plaintiff must obtain leave of court before he may file any additional pleadings in this case. Plaintiff repeatedly has attempted to file motions and other documents attacking the Judgment. Leave to file has been denied because the proposed submissions are frivolous, since they seek to raise issues already resolved.

The Magistrate Judge recommends that the Court enter an order rejecting plaintiff's proposed supplement, attachments, and motions listed in the Report and Recommendation and that the Court schedule an evidentiary hearing to determine whether plaintiff should ber held in contempt of Court for his disregard of the Court's Orders. Plaintiff has filed a lengthy objection in the form of of an emergency motion and supplements thereto, charging that this Court is biased against him and attempting to reargue the underlying case. The Court is neither biased against plaintiff nor has it denied him due process. The Court agrees with the Magistrate Judge's recommendation.

NOW THEREFORE, IT IS HEREBY ORDERED that the Report and Recommendation of the Magistrate Judge dated July 31, 1997 (pleading No. 270) is ADOPTED as the Opinion of this Court.

IT IS FURTHER ORDERED that the supplement, attachments, and motions referenced in the Report and Recommendation are REJECTED.

IT IS FURTHER ORDERED that plaintiff's emergency motion to alter, amend, or vacate the 7/31/97 Report and Recommendation and, in the alternative, to vacate the 12/19/90 Judgment and 1/5/94 Order (pleading No. 271) is DENIED and that all of the attachments to the motion are REJECTED.

IT IS FURTHER ORDERED that a hearing will be held on Monday, October 10, 1997 at 10:00 A.M.. in courtroom 601, 110 Michigan N.W., Grand Rapids, Michigan, and that plaintiff must appear at the hearing to show cause why

he should not be held in contempt of this Court.

IT IS SO ORDERED.

s/BENJAMIN F. GIBSON, SENIOR U.S.DISTRICT JUDGE"

9/11/97 The Magistrate Judge DENIED Plaintiff's (1) 9/4/97 Motion For Full 1990-97 Record To Be Available At Hearings, And (2) 9/9/97 Motion For Prompt Ruling On Substantiality Of Three Constitutional Claims Before Any Hearing:

"UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION FILED 9/11/97

DONALD EDGAR JOHNSON, Case No. 1:90-CV-175

Plaintiff, Hon. Benjamin F. Gibson

V.

RICHARD GORDON JOHNSON, et al,

Defendants. ORDER

This matter is before the court on plaintiff's emergency motion for leave from magistrate judge for court's prompt ruling on **substantiality of plaintiff's three constitutional claims** before any hearing (docket no. 278). Plaintiff is subject to restrictions with regard to his filing of pleadings or other documents in this court and the motion should not have been accepted for filing. Nonetheless, as the motion has been accepted for filing, the court will consider on its merits. After due consideration, plaintiff's motion is DENIED.

This matter is also before the court on plaintiff's emergency motion for full 1990-1997 record to be available for all future hearings (docket no. 277). After due consideration, plaintiff's motion is DENIED.

Entered 9/10/97 s/Hugh W. Brenneman Jr., U.S. Magistrate Judge."

9/22/97 The Magistrate Judge: DENIED Plaintiff's 9/15-9/16//97 Motions (1) To Alter Or Amend 9/11/97 Order, (2) To Change 10/6/97 Hearing From Contempt To Invoking Procedure For 3-judge Court; And In The Alternative, To Certify Questions For Direct Appeal To The U.S. Supreme Court, And (3) For Transmitting

Evidence To District Court:

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN-SOUTHERN DIVISION

FILED 9/22/97

DONALD EDGAR JOHNSON, Case No. 1:90-CV-175
Plaintiff, Hon. Benjamin F. Gibson
V.

ORDER

RICHARD GORDON JOHNSON, et al,
Defendants.

This matter is before the court on plaintiff's emergency motion for magistrate judge by 9/17/97 to alter or amend his 9/11/97-filed order and the court to change 10/6/97 hearing from contempt to invoking procedure for 3-judge court, and in the alternative, to certify questions for direct appeal to the U.S. Supreme Court (docket no. 281), Supplement to emergency plaintiff's motion for leave from magistrate judge for court's prompt ruling on substantiality of plaintiff's three constitutional claims before any hearing (docket no. 282), Motion for leave for clerk to issue two requests for evidence (docket no. 283), and supplement to emergency plaintiff's motion for magistrate judge by 9/17/97 to alter or amend his 9/11/97-filed order and the court to change 10/6/97 hearing from contempt to invoking procedure for 3-judge court; and in the alternative, to certify questions for direct appeal to the U.S. Supreme Court (docket no. 284). Plaintiff is subject to restrictions with regard to his filing of pleadings or other documents in this court and the motions and supplements should not have been accepted for filing. Nonetheless, as the motions and supplements have been accepted for filing, the court will consider them on their merits. After due consideration, the relief requested in plaintiff's motions and supplements is DENIED.

IT IS SO ORDERED.

Dated: 9/22/97. s/Hugh W. Brenneman Jr., U.S. Magistrate Judge.

9/30/97 The District Judge Stayed Scheduled 10/6/97 Contempt Hearing Pending Appeal:

"UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN-SOUTHERN DIVISION
DONALD EDGAR JOHNSON, FILED 9/30/97
Plaintiff, File No. 1:90-CV-175
V. Hon. BENJAMIN F. GIBSON
RICHARD GORDON JOHNSON, et al.,
Defendants. ORDER ADJOURNING HEARING

At a session of the Court held in and for said District and Division, in the City of Grand Rapids, Michigan, this 29th day of September, 1997.

PRESENT: THE HONORABLE BENJAMIN F. GIBSON
SENIOR UNITED STATES DISTRICT JUDGE

"In this matter. it appearing to the Court that plaintiff's appeal is pending before the Sixth Circuit, NOW, THEREFORE,

IT IS HEREBY ORDERED that the show cause hearing scheduled for Monday, October 6, 1997, at 10:00 a.m. is ADJOURNED WITHOUT DATE, pending resolution of the appeal before the Sixth Circuit.

IT IS SO ORDERED.

s/BENJAMIN F. GIBSON
SENIOR U.S. DISTRICT JUDGE"

2/10/98 Court of Appeals -- Including Judge NORRIS Who Adjudicated The FRAUD UPON COURTS Appeal No. 91-1160 -- 9/10/97 GRANTED Plaintiff's 28 USC § 636(c)(4)(5) Petition For Leave To Appeal District Judge's Denial of FRCVP 60(b)(6); 28 USC §§ 144, 2283, 2284 Relief; 10/10/97 Labeled Don's Amendment To His Appeal As A Separate Case; Consolidated The Cases And DISMISSED Don's Appeal Because "Plaintiff Has Not Been Held In Contempt Nor Have Sanctions Been Imposed"; Then Fabricated An Untrue Opinion:

Nos. 97-1944, 97-1955 & 97-2062
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
DONALD EDGAR JOHNSON, FILED FEB 10 1998

Plaintiff-Appellant, LEONARD GREEN, Clerk

v. O R D E R

RICHARD GORDON JOHNSON, et al,
Defendants-Appellees.

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

* * * Before: MARTIN, Chief Judge, NORRIS and CLAY, Circuit Judges.

"These cases are before the court upon initial consideration of appellate jurisdiction.

A review of the documents before the court indicates that on August 13, 1997 the district court scheduled a hearing to determine if the plaintiff should be held in contempt. Plaintiff's appeal of August 25, 1997 was docketed as appeal No. 97-1944. A second appeal from the same order was docketed as appeal No. 97-1955. The magistrate judge by order of September 22 denied a motion to alter or amend the September 11 order denying a full record be available at future hearings or to certify the case to the United States Supreme Court. On September 30, the district judge adjourned the contempt hearing pending resolution of the appeal. Plaintiff's third notice of appeal from the orders of August 13, September 11, September 22 and September 30 was docketed as appeal No. 97-2062.

This court lacks jurisdiction in these appeals. Plaintiff has not been held in contempt nor have sanctions been imposed. Accordingly, the various orders regarding the possible contempt determination are not appealable See In re Shalala, 996 F 2d 964 (8th Cir 1993), Shimer v. Fugazy (In re Fugazy Express, Inc.), 982 F 2d 769,775 (2d Cir. 1992). Also, the orders entered by the magistrate judge are not appealable because he was not given plenary jurisdiction pursuant to 28 U.S.C. § 636(c)(1), See McGraw v. Connelly (In re Bell & Beckwith), 838 F 2d 844, 848 n 5 (6th Cir. 1988). Ambros v. Welch, 729 F 2d 1084,1085 (6th Cir. 1984)(per curiam).

It is ordered that the appeals are dismissed. ENTERED BY ORDER OF THE COURT. s/LeonardGreen, Clerk"

5/8/98 Mandate And Motion To Stay DENIED:

"U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT
Donald C. Weston Sr. Filed: May 8, 1998
Western District of Michigan at Grandrapids
110 Michigan Avenue, N.W.
Suite 452 Federal Building
Grand Rapids, MI 49503

RE: 97-1944: 97-1955: 97-2062
Donald Edgar Johnson vs. Johnson, et al
District Court No. 90-00175

The mandate issued in the above-styled case.

Please be advised that the certified record will be sent under separate cover.

Sue Burlage, Case Manager

cc: Donald Edgar Johnson
Ms. Margaret A. Nelson"

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"Case Nos. 97-1944: 97-1955: 97-2062
U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

V. FILED May 8 1998

RICHARD GORDON JOHNSON, et al,
Defendants-Appellees.

BEFORE: MARTIN, Chief Judge; NORRIS and CLAY, Circuit Judges

Upon consideration of the appellant's 'tendered' motion for stay of mandate which was received one day late; it is ORDERED that the motion shall be accepted for filing.

Furthermore, upon consideration of the motion, it is ORDERED that the appellant's motion for stay of mandate pending outcome of review by the U.S. Supreme Court is DENIED as the appellant has failed to demonstrate good cause. ENTERED BY ORDER OF THE COURT. s/Leonard Green, Clerk".

APPENDIX B: 1970-89 OTHER CHRONOLOGICAL OPINIONS, ORDERS, FINDINGS OF FACTS, AND CONCLUSIONS OF LAW ENTERED IN THE NONCLOSED 1990 CASE INCLUDING COMPANION CASES NECESSARY TO ASCERTAIN GROUNDS OF THE 4/17/90-TO-5/8/98 ORDERS TO BE REVIEWED:

-

6/26/70 Utilizing 4/15/65 Unlawful Invalid $20,600 Promissory Note, Confidence Game Perpetrator Deft Landman Law Firm's (Which 1964-65 Represented Don & Richard In Behalf Of 4 Johnson Family Venture) Client Richard G. Johnson's (In Behalf Of deft 3 Johnsons) County Circuit Court Case No. C-4921 Default Judgment Against Nonlawyer Joint Venturer Don For Taking Don's Private Properties (Monumental Nightclub Equity Ownership Plus A Power Of Attorney To Deft Richard To Negotiate Terms Of Nightclub Purchase) Without Reasonable Access, Due Process, Equal Protection, Or Just Compensation For Public Use In Violation Of Const. Amends. 1,5,14

-- Where Albert J. Engel-Jr-Recommended To-Be County Circuit Judge: (1) Had 1/22/66 Instructed 4 Johnson Joint Venturers Not To Incorporate Nightclub Yet, And (2) Had Promised Don To Allow Don's Father, Deft Carl A. Johnson-Sr., To Represent Exhausted Nonlawyer Don In 1970 Court Proceedings.

-- And Where Deft O'Toole Law Firm f/k/a Engle & Engel, Representing Both Joint Venture Buyers And Sellers Of Nightclub Liquor License: (1) Refused To Represent Don, And (2) Refused To Provide Don With Unlawful Moneylender Documents That Were Locked Away From Don 1965-74:

"STATE OF MICHIGAN

CIRCUIT COURT FOR THE COUNTY OF MUSKEGO

RICHARD G. JOHNSON, TRUSTEE Case No. C-4921

Plaintiff,

v. DEFAULT JUDGMENT

DONALD E. JOHNSON

Defendant. ENTERED 6/26/70

"The default of Donald E. Johnson, defendant in the above cause, having been regularly entered pursuant to G.C.R. 520, the defendant having failed to appear in said action, and the damages of plaintiff having been regularly assessed by the Court at $35,835.29:

THEREFORE IT IS ORDERED AND ADJUDGED that there is due to the plaintiff upon the note and mortgage mentioned and set for in the complaint, for principal and interest and unpaid real estate taxes, the sum of $35,835.29 and that the said defendant pay or cause to be paid, to the said plaintiff, the sum so as aforesaid decreed to be due to the plaintiff with the interest thereon, at the rate of six percent (6%) per annum from this date, and the cost of the said plaintiff expended in this suit of $35.80, to be taxed for the proceedings taken and had in this cause to foreclose the mortgage aforesaid, on or before the 12th day of January, 1971, and in default thereof, that all and singular the said mortgaged premises mentioned in the complaint in this cause, and hereinafter described or so much thereof as may be sufficient to raise the amount so as aforesaid decreed to be due to the plaintiff with the interest thereon and the cost in this case * * *

IT IS FURTHER ORDERED that in six months from the date of such sale, the defendant and all persons claiming or to claim from or under him be forever barred and foreclosed of an from all equity redemption, and claim of, in and to the said mortgaged premises so sold * * *

IT IS FURTHER ORDERED, tha the purchaser or purchasers of the said mortgaged premises

at such sale be let into possession of such premises at the time of said sale and placed in possession * * *

AND IT IS FURTHER ORDERED, that if the monies arising from such sale be insufficient to pay the amount so as aforesaid decreed to be due * * * Donald E. Johnson * * * pay to the plaintiff the amount of such deficiency, with interest thereon from the date of such report.

The description and particular boundaries of the property * * * are more particularly described as follows, to-wit: Parcel 1. Commence 254.25 feet South * * * Parcel 2. Commence 254.25 feet South * * * Dated: June 26, 1970. s/CHARLES A. LARNARD, Circuit Court Judge."

(Merged in Judgment: 6/22/70-Filed $20,600 Invalid Promissory Note That Was Unsigned By Donald E. Johnson.) (Printed on Deft Landman law firm's stationery).

11/27/74 "Bought" County Trial Judge Piercey's OPINION -- Contrary To Don's Preponderance Of Evidence Received Plus Evidence Not Received -- Before Walking Off The Bench Just As Don Was About To Introduce A Long List Of Proofs Of Family Joint Venture And Before Any Closing Argument:

"You have tried to translate fatherly, motherly, brotherly, concern for your interest into some kind of a joint venture * * * This was never a joint venture * * * And as far as I am concerned, you rested * * * You may not have ever used that form -- the words: 'I rest'; but * * * You have been saying it for two weeks, and I'm through!" (Whereupon the Judge walked off the Bench.)

12/9/74 County Trial Judge Piercey's Case No. 73-C7432-CK Partial Trial's Dismissal Judgment That District Judge Gibson 12/19/90 Ordered Not To Be Attacked. Prepared By Confidence Game Perpetrator Deft Landman Firm, It Contains FRAUDS UPON COURTS: (1) That "Plaintiff Rested His Case," (2) That "The Defendants Having Moved For Judgment At The End Of Plaintiff's Case", (3) That "The Court Having Made Findings Of Fact And Conclusions Of Law," And (4) That "Plaintiff Not Having Proven The Allegations Contained In His Complaint":

"STATE OF MICHIGAN
IN CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
FILED 1974 DEC 9 PM 2:44

* * *

DONALD EDGAR JOHNSON,
Plaintiff, File No. 73-7432-CK

v.

CARL ALFRED JOHNSON, SR., et al,
Defendants. JUDGMENT

Donald Edgar Johson
In Propria Persona

William F. McNally (P-17533)
Attorney for Defendants

At a session of said Court held in the County Building in the City of Muskegon, County and State aforesaid, on the 9th day of December, 1974.

PRESENT: s/JOHN H. PIERCEY, CIRCUIT JUDGE

"The above entitled action having come on for trial, the plaintiff having presented evidence and rested his case, the defendants having moved for Judgement at the end of plaintiff's case, the Court being fully advised in the premises, and the Court having made findings of fact and conclusions of law,

IT IS ORDERED, that defendants' Motion be and hereby is granted and Judgement of No Cause of Action be entered in favor of the Defendants, with costs and statutory attorneys fees being taxed against plaintiff, plaintiff not having proven the allegations contained in his

complaint for the reasons set out in the opinion of the Court rendered in open court.

s/JOHN H. PIERCEY, CIRCUIT JUDGE

Countersigned: s/James C. Shields, Jr., Deputy Clerk.

Approved as to Form:

s/William F. McNally

Donald Edgar Johnson
Plaintiff
4984 Grand Haven Road
Muskegon, Michigan 49441

William F. McNally, of
LANDMAN, HATHAWAY,
LATIMER, CLINK & ROBB
Attorneys for
Defendants
500 Hackley Bank Bldg.
Muskegon, Michigan 49443

I HEREBY CERTIFY that this copy to be a true and correct copy of the original on file with the office of COUNTY CLERK. This Certified Copy VALID only When SEAL And RED SIGNAYURS Are Affixed. s/Magaret H. Greenwood, MUSKEGON COUNTY CLERK."

(Printed On Deft Landman Firm's Stationery).

7/2/75

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN 56870 Entered 7/2/75

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. CARL ALFRED JOHNSON, SR., et al, Defendants-Appellees COA 22496; LC 74-7432

"On order of the Court, plaintiff-appellant's in pro per motion for leave to use proposed capsule staements and proposed statement of proceedings and facts, and his motion for the production of certain records, are considered, and the same are hereby DENIED as not appropriate under the general court rules."

2/5/76 State Court Of Appeals Ordered Transcripts To Be Filed In The Muskegon County Circuit TRIAL Court:

"STATE OF MICHIGAN - COURT OF APPEALS
AT A SESSION OF THE COURT OF APPEALS
OF THE STATE OF MICHIGAN * * * 2/5/76
DONALD EDGAR JOHNSON,
Plaintiff-Appellant
v. Donald E. Holbrook,Jr., P.J.
CARL ALFRED JOHNSON, SR.,

RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
Jointly and severally, Docket #22496
Defendants-Appellees L.C. No. 73 C-7432 CK

"In this cause this Court having issued an order on September 24, 1975 denying the defendants-appellees' motion to dismiss and the defendants-appellees having filed a motion for reconsideration of this Court's order denying the motion to dismiss, and various motions for leave to use proposed capsule statement of proceedings having been filed by the plaintiff-appellant, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for reconsideration be, and the same is hereby GRANTED,

...IT IS FURTHER ORDERED that this appeal be, and the same is hereby DISMISSED without prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed **in the trial court**,

IT IS FURTHER ORDERED that the various motions for leave to file various capsule statementy of proceedings filed by the plaintiff-appellant be, and the same are hereby DENIED."

5/26/76

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN

56870 Entered 5/26/76

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., Defendants-Appellees

COA 22496; LC 73-C-7432

"On order of the Court, the application in pro per for leave to appeal is considered, and the same hereby is DENIED, because appellant has failed to persuade the Court that the questions presented should be review by this Court.

The motion by appellant to add defendants-

appellees is also considered, and the same hereby is DENIED."

10/3/77 6th Cir. Court Of Appeals Denied Don's F.R.A.P. 44 Motion For Certification To U.S. Attorney General Of CONSTITUTIONAL QUESTION:

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT
FILED OCT 3 1977 No. 77-1346

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. CARL ALFRED JOHNSON, SR., ET AL., Defendants-Appellees

This cause having come before the court on the motion of the appellant for certification to be made to the Attorney General of the United States of a question raised in this appeal as to the constitutionality of an Act of Congress, pursuant to Rule 44, Fed.R.App.P.; and

This court having reviewed the record and pleadings in the cause and being unable to discover any such challenge to the constitutionality of any Act of Congress as suggested by appellant;

It is therefore ORDERED that the motion be denied."

12/29/77

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN
60385 Entered 12, 29, 77

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. CARL ALFRED JOHNSON, SR.,et al, Defendants-Appellees

COA 22496; LC 73-C-7432

"On order of the Court, the application in propria persona for leave to appeal and the emergency motion for prompt adjudication are considered, The emergency motion is GRANTED and the application is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court."

8/23/77 Pltf's Motion In State Court Of Appeals For Stay of 2/5/76 Dismissal Order DENIED:

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN No. 22496 Entered 8/23/77

Donald E. Holbrook, Jr. P.J.

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

v. L.C. No. 73 C7432 CK

CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

"In this cause, plaintiff-appellant has filed a motion for stay of this Court's order of dismissal entered on February 5, 1976, and **answer in opposition thereto having been filed,** and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for stay be, and the same is hereby DENIED."

12/29/77

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN

60385 Entered 12/29/77

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

v. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., Defendants-Appellees

COA 22496; LC 73-C-7432-CK

"On order of the Court, the application in propria persona for leave to appeal and the emergency motion for prompt adjudication are considered. The emergncy motion is GRANTED and the application is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court."

11/15/78 Deft Judge Danhof Who Was Nonjudicially Involved In Perpetuating Defts 3 Johnsons' Disguise DENIED Don's Motion For Stay Of Court's 2/5/76 Dismissal And Motion For Disqualification Of Deft Landman Partnership From Representing Deft 3 Johnsons:

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN Entered 11/15/78 No.22496

Robert J. Danhof, C.J., Presiding Judge

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

v. L.C. No. 73 C7432 CK

CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

"In this cause, plaintiff-appellant has filed a motion for stay of this Court's order of dismissal entered on February 5, 1976 and a motion for disqualification of counsel for defendants-appellees, and no answerin opposition thereto having been filed, and due consideration thereof having been had by the Court;

IT IS ORDERED that the motion for stay and the motion for disqualification be and the same are hereby DENIED."

10/26/79: Deft Judge Danhof DENIED Don's Application For Delayed Appeal Of Right "Because It Is Filed More Than 18 Months After The Entry Of The December 9, 1974 Order Appealed From."

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN Entered 10/26/79 No.45093

Robert J. Danhof, C.J., Presiding Judge

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

v. L.C. No. 73 C7432 CK

CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

In this cause an application for leave to appeal and motion for waiver of fees, and a motion for immediate consideration thereof are filed by plaintiff-appellant, and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the motion to waive fees be, and the same is hereby GRANTED;

IT IS FURTHER ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED:

IT IS FURTHER ORDERED that the application be, and the same is hereby DENIED for lack of jurisdiction. GCR 1963, 806.2(5), in this

application plaintiff seeks review of a December 9, 1974 circuit court dismissal of his action. The May 8, 1979 circuit court order involves post-judgment motions which plaintiff filed in circuit court in an attempt to perfect an application for delayed appeal before this Court. This Court may not grant plaintiff's application because it is filed more than 18 months after the entry of the Decdmber 9, 1974 order appealed from."

3/11/80

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN Entered 3/11/80

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

SC: 64310
v.
COA: 45093
CARL ALFRED JOHNSON, SR., LC: 73-C7432-CK
RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR.,
Jointly and severally,
Defendants-Appellees.

"On order of the Court, the motions for immediate consideration are considered, and they are GRANTED. The application in propria persona for leave to appeal is also considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court."

2/8/82 County Judge Piercey HEARING:

"THE COURT: Your motion, as I understand it, is to add the Landman law firm as Defendants?

DONALD JOHNSON: ... The bottom line of this whole problem here is: 'Were the Defendants moneylenders or joint venturers?' And I repeat that they never did let me have custody of their money or property. They always had their joint control of it.

THE COURT: **I don't recall ever calling them moneylenders.** I think I referred to them as giving you money, giving you money, not lending you money.

DON JOHNSON: They didn't give me money because I never got it. Their money stayed under their control.. Had they given me their money, I

would have had it in my bank account of my personal possession where I could reach in any time I wanted to and take it out and spend it the way I wanted. That never happened. They never gave me any money."

5/10/82 County Trial Judge Piercey Ordered County Circui Court Records To Accept No More Pleadings From Don Unless Ordered To By A Higher Court:

"TO: Circuit Court Records
FROM John H. Piercey, Circuit Judge
You are herewith instructed to accept no more pleadings in the case of - Donald Edgar Johnson v Carl Alfred Johnson, Sr., Richard Gordon Johnson, Carl Alfred Johnson, Jr., joint and severally, Defendants; File No. 73-C7432, unless directed by the Court of Appeals or a higher Court. s/John H. Piercey."

11/23/82 In A "No Judges" Ruling And After Resulted Indigent Don 1976-82 Bootstrapped himself Off Public Welfare And Piecemeal Filed $5,000 Full Transcripts Of The Proceedings In TRIAL COURT Pursuant To 2/5/76 Order, "Danhof's Court" Denied Don's Application For Delayed Appeal Of Right Because Don Did Not File Those Transcripts In The COURT OF APPEALS:

"STATE OF MICHIGAN - COURT OF APPEALS
AT A SESSION OF THE COURT OF APPEALS
OF THE STATE OF MICHIGAN * * *
DONALD EDGAR JOHNSON

Present _____

Plaintiff-Appellant,

v

11/23/82

CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
Jointly and severally,

Docket No.59895

Defendants-Appellees

L.C. #73 C-7432-CK

* * * In this cause the plaintiff-appellant has filed an emergency application for leave to file a delayed appeal of a judgment entered on December 9, 1974, and an order denying relief

in the circuit court dated February 11, 1982, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the application be, and the same is hereby DENIED for lack of jurisdiction in the Court of Appeals, GCR 1963, 806.2(5).

Plaintiff-appellant's application seeks delayed review of proceedings which terminated in a judgment adverse to him on December 9, 1974. His failure to file an appropriate record in No. 22496 resulted in dismissal of that claim of appeal, without prejudice to filing a delayed appeal pursuant to GCR 1963, 806.4(2) and upon filing full transcripts **with this court.** See order dated February 5, 1976.

Plaintiff-appellant's failure to file any transcripts with the Court until October 2, 1979, resulted in an order denying an application for leave to file a delayed appeal dated October 23, 1979. Because this applicaion also is outside the 18-month rule of GCR 1963, 806.2(5), it is likewise DENIED for lack of jurisdiction.

s/_____"

5/4/83 County Trial Judge Piercey's Replacement Judge #1 Judge Pannucci Ordered Due Process Hearing To Determine If The 12/9/74 Judgment Was Procured And Prolonged By FRAUDS UPON THE COURT:

TO: Mrs. Helen Cremax, Case Assignment Clerk
FROM: HON. RONALD H. PANNUCCI, CIRCUIT JUDGE
RE: DONALD EDGAR JOHNSON V. CARL ALFRED JOHNSON, ET AL
DATED: May 4, 1983.

Please see attached Emergency Motion. This matter is scheduled for Friday, May 13, 1983 at 2:30 p.m. You will please make necessary arrangements to have a District Court Judge present to hear this motion, as well as pleas which I am advised you have previously scheduled.

I am aware of a previous Judge Piercey Order denying Plaintiff an opportunity to file any pleadings. I am setting aside this Order to

allow Plaintiff his day in court.
cc: Mr. Donald E. Johnson
Mr. William F. McNally
Circuit Court Records
Hon. R. Max Daniels
Hon. Jas. M. Graves, Jr.

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE WITH THE OFFICE OF THE COUNTY CLERK * * *
s/SHERYL L. ALBERTIE, Muskegon County Clerk"

5/10/83 Pltf's Case No. 73-C7432-CK Was Denied Due Process-Equal Protection Motion For New Trial's Evidentiary Hearing Due To Deft Landman Partnership's (Including Attys Culver & McNally) 6/6/83 FRAUD ON COURTS That "The Judgment From Which Plaintiff Johnson Seeks Relief Was Entered Many Years Ago, And The Full Appellate Process Has Been Exhausted":

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v.
CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
jointly and severally,
Defendant-Appelles.

O R D E R

Circuit Court
File No. 73-C7432-CK

CALENDARED

The court has reconsidered the May 4, 1983 memorandum;

It is therefore ORDERED that the May 10. 1982 Order signed by Judge Piercey is reinstated.

The Clerk is instructed to return all pleadings and fees.

Dated: May 10, 1983.

s/RONALD H. PANNUCCI,
Chief Circuit Judge

cc: Mrs. Helen Crehan
Circuit Court Records
Mr. Donald E. Johnson
Mr. William F. McNally

I HEREBY CERTIFY etc."

6/29/83 County Judge Piercey's Replacement #2 Judge Kobza Ordered Don To Remove His Preponderance Of Evidence Presented In 1974 Partial Trial From The County Courthouse Files As If Case 73-C7432-Ck Had Been Provided An Appeal By The Michigan Court of Appeals When It Really Hadn't:

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v. File No. 73-C7432-CK
CARL ALFRED JOHNSON, SR., et al,
Defendants-Appellees.

"This Court is advised certain exhibits are currently on file with the Muskegon County Clerk's office, Court Records Dept., in the above determined matter, and that it is the opinion of the Court said cause was appealed and the Michigan Supreme Court has denied leave to appeal further, the time for filing any motion for reconsideration long since passed; **IT IS HEREBY ORDERED all exhibits in the possession of the Court Records be picked up by the Plaintiff, Donald Edgar Johnson, by Friday, July 1, 1983,** 12:00 o'clock noon; and he is to sign a prepared receipt therefor, or this Court will order them removed and/or destroyed in accordance with the General Court Rule so providing. This Order is to take effect immediately. s/Michael E. Kobza."

9/27/83

"STATE OF MICHIGAN - COURT OF APPEALS
AT A SESSION OF THE COURT OF APPEALS
OF THE STATE OF MICHIGAN * * *
DONALD EDGAR JOHNSON
John H. Shepard, P.J.
Plaintiff-Appellant,
v 9/27/83
CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
Jointly and severally, Docket 50565
Defendants-Appellees L.C. #73 C-7432-CK

"In this cause a delayed application for leave to appeal and motion for immediate consideration are filed by plaintiff-appellant, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED,

IT IS FURTHER ORDERED that the application be, and the same is hereby DENIED for lack of merit in the grounds presented."

1/30/84

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN

Entered 1/30/84

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v.
CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR.,
Jointly and severally,
Defendants-Appellees.

SC: 73254
COA: 50565
LC: 73-C7432-CK

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court."

9/20/84 No Judge Listed!!

"STATE OF MICHIGAN - COURT OF APPEALS
AT A SESSION OF THE COURT OF APPEALS
OF THE STATE OF MICHIGAN * * *
DONALD EDGAR JOHNSON

Present _____

Plaintiff-Appellant,
v
CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
Jointly and severally,
Defendants-Appellees

9/20/84

Docket No. 59895
L.C.#73C-7432-CK

"In this cause an application for leave to appeal is filed by plaintiff-appellant,

and no answer in opposition therein having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the application be, and the same is hereby DENIED for lack of merit in the grounds presented."

3/28/85

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN — Entered 3/28/85

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

SC: 75403
COA: 78170
LC: 73-C7432-CK

v.
CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR.,
Jointly and severally,
Defendants-Appellees.

"On order of the Court, the application in propria persona for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the question presented should be reviewed by this Court."

2/4/86

"STATE OF MICHIGAN - COURT OF APPEALS
AT A SESSION OF THE COURT OF APPEALS
OF THE STATE OF MICHIGAN * * *
DONALD EDGAR JOHNSON,

Present _____

Plaintiff,
v

2/4/86
No. 88008

MUSKEGON CIRCUIT COURT JUDGE,
CARL ALFRED JOHNSON,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR., **LANDMAN LATIMER CLINK & ROBB, Law Firm Partnership, and WILLIAM F. MCNALLY**
Defendants.

"In this cause a complaint for superintending control and motion for immediate consideration are filed by plaintiff, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the

Court,

IT IS ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED,

IT IS FURTHER ORDERED that the complaint for superintending control be, and the same is hereby DENIED for lack of merit in the grounds presented."

Judge Shepherd would order pursuant to MCR 7.206(B)(3) that the Muskegon County Circuit Court shall allow plaintiff to file an independent action based upon alleged fraud upon the Court, MCR 2.612(C)(3), provided that the requisite fees and costs are either paid, waived or suspended. By allowing plaintiff to file an independent action below, this Court expresses no opinion on the form and content of the pleadings which may be filed, merits of plaintiff's action or any defenses which may be raised."

6/20/86 In A "Non-Evidentiary" Hearing, County Judge Kozba (1) Ordered That Don's No. 73-C7432-CK And Independent Action No. 86-21207-CZ Seeking "Fraud Upon Court" Evidentiary Hearing Be Consolidated; (2) Denied Don's Request For Disqualification Of Deft Culver And O'Toole Law Firm Partnerships From Dual Representation Of Nightclub Sellers And Joint Venture Deft 3 Johnsons Disguised-As-Moneylenders Buyers:

"STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DONALD EDGAR JOHNSON,
Plaintiff,

v. File No. 86-21207-CZ

RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR.;
and ESTATE OF CARL A.
JOHNSON, SR., Jointly and Severally,
Defendants.

DONALD EDGAR JOHNSON, In Pro Per
FRED C. CULVER, JR. (P-12381)
Attorney for Defendants Richard Gordon Johnson and Carl Alfred Johnson, Jr.

Culver, Lague & McNally
500 Terrace Plaza
Muskegon, Michigan 49443
Telephone: 616/725-8148
THOMAS J. O'TOOL (P-18558)
Attorney for Defendant Estate of Carl A. Johnson, Sr.

JUDGMENT ORDER

At a session of said court held in the County Building, Muskegon, Michigan, on the 20th day of June, 1986.

PRESENT: HON. MICHAEL E. KOBZA, Circuit Judge.

"Defendants having filed their motion for summary disposition of all of plaintiff's claims for failure to state any claim upon which relief can be granted pursuant to MCR 2116(C)(8), and the Court having fully considered plaintiff's arguments in reply, and oral arguments having been heard in open court on April 21, 1986, and

The Court having initiated its own dispositive motion and order on or about May 7, 1986,

IT IS ORDERED that Muskegon County Circuit Court Action **73-C-7432-CK be consolidated with the instant case 86-21207-CZ**, and

IT IS FURTHER ORDERED, in accordance with this Court's findings on the record, together with this Court's Opinion and Order of May 7, 1986, that plaintiff's claims be dismissed with full prejudice, but without costs, and plaintiff's emergency motion and objection to the entry of this judgment order are denied, and

IT IS FURTHER ORDERED that plaintiff not submit any further documents or pleadings to be filed in Muskegon Circuit Court in these consolidated matters.

s/HON. MICHAEL E. KOBZA, Circuit Judge"
(On CULVER LAGUE & McNALLY stationery).

6/20/86: "THE COURT: You do not have a right to pick your oppnents' counsel." County Judge Kobza's 6/20/86 Hearing.

6/30/86

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN Entered 6/30/86

DONALD EDGAR JOHNSON,
Plaintiff-Appellant, SC: 78441

v. COA: 88008

MICHAEL E. KOBZA; CARL ALFRED JOHNSON; RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR.; LANDMAN, LATIMER, CLINK & ROBB; and WILLIAM F. McNALLY, et al, Defendants-Appellees.

"On order of the Court,the delayed application in propria persona for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court."

10/22/86

"At A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN No.92822

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

v. Entered 10/22/86

RICHARD GORDON JOHNSON,
CARL ALFREDJOHNSON, JR.,
and the Estte of CARL A. JOHNSON, SR.,
Defendants-Appellees.

L.C.73 C7432CK+86 21207CZ

In this cause, plaintiff-appellant has filed a motion to compel the trial court to re-accept trial exhibits, and no answer thereto having been filed, and due consideration thereof having been had by the Court;

IT IS ORDERED that the motion be, and the same is hereby DENIED."

2/25/87-5/6/88 State Court Of Appeals (1) Denied Don's Motion To Compell Transmission Of Complete-With-Evidence Record To State Court Of Appeals, And (2) Denied Evidentiary Hearing:

COURT OF APPEALS - STATE OF MICHIGAN

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

V. 92822 FILED 2/25/87 L.C. 86 21207CZ

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and The ESTATE OF CARL A. JOHNSO, SR.,

Defendants-Appellees,jointly and severally,

"In this cause, plaintiff-appellant, has filed a motion to compel the transmission of the lower court record in Muskegon County Circuit Court No. 73-C7432 to this Court, and a motion to expedite and no answer thereto having been filed, and due consideration thereof having been had by the Court; IT IS ORDERED that the motion be and the same is hereby DENIED at this time. The denial of the motion shall not bar this Court from requesting the transmittal of the record if the Court later determines that it needs the record in Muskegon County Circuit Court No. 73-C7432; IT IS FURTHER ORDERED that the motion to expedite be and the same is hereby DENIED."

5/22/87

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN Barbara B. MacKenzie, P.J.

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

V. ENTERED 5/22/87 No. 92822

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and the Estate of CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees.

L.C.73 C7432CK+86 21207CZ

"In this cause plaintiff-appellant has filed a motion to disqualify Chief Judge Danhof, and no answer in opposition thereto being filed, and due consideration thereof havin.g been had by the Court;

IT IS ORDERED that the motion be, and the same is hereby DENIED."

6/15/87

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN

Barbara B. MacKenzie, P.J.

DONALD EDGAR JOHNSON, Plaintiff-Appellant,

V. ENTERED 6/15/87 No. 92822

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and the Estate of CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees.

L.C.73 C7432CK+86 21207CZ

"In this cause plaintiff-appellant has filed a motion for stay of proceedings, and

a supplement to the motion, and second, third, fourth and fifth supplements to the motion, and no answer in opposition there being filed, and due consideration thereof having been had by the Court;

IT IS ORDERED that the motion for stay be, and the same is hereby DENIED."

11/18/1987

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN Daniel F.Walsh, P.J.
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
V. ENTERED 11/18/87 No. 92822
RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and the Estate of CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees.
L.C.73 C7432CK+86 21207CZ

"In this cause plaintiff-appellant having filed a motion for peremptory reversal pursuant to MCR 7.211(C)(4), and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDEREDthat the motion for peremptory reversal be, and the same is hereby DENIED for failure to persuade the Court that reversible error is so manifest that an immediate reversal of the judgment appealed from should be granted without formal argument or submission."

1/11/88

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN Daniel F.Walsh, P.J.
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
V. ENTERED 11/18/87 No. 92822
RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and the Estate of CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees.
L.C.73 C7432CK+86 21207CZ

"In this cause a motion for miscellaneous relief is filed by plaintiff-appellant, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion be, and the

same hereby DENIED."

3/3/88 State Court Of Appeals Without Reviewing Plaintiff's Evidence Affirmed Judge Kobza's Granting Deft Culver And Deft O'Toole Law Firm Partnerships' Motions For Summary Disposition Of Consolidated Cases Nos. 73-C7432-CK And 86-21207-CZ, LIED That Plaintiff Failed To Cite Any Authority In Support Of His Request For An Order Directing County Trial Court To Deliver 1974 Trial Exhibits To Court Of Appeals:

COURT OF APPEALS - STATE OF MICHIGAN

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. 92822 FILED 3/3/88
RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and The ESTATE OF CARL A. JOHNSO, SR., jointly and severally, Defendants-Appellees.

L.C.73 C7432CK+86 21207CZ

"PER CURIAM: Plaintiff-appeals as of right from a June 20, 1986 order granting defendants' motion for summary disposition pursuant to MCR 116(C)(8) and dismissing plaintiff's complaint. Initially we note that although defendants brought their motion for summary disposition pursuant to MCR 2.116(C)(8), failure to state a claim upon which relief may be granted, a review of the trial judge's decision reveals that he looked beyond the pleadings in deciding defendants' motion. Therefore, we will construe the order granting summary disposition as one granted pursuant to MCR 2.116(C)(10), no genuine issue of material fact. Huff v Ford Motor Co. 127 Mich App 287, 338 NW2d 387 (1983).

A motion for summary disposition premised upon MCR 2.116(C)(10), no genuine issue as to any material fact, requires the trial court to review he entire record to determine whether the nonmoving party has discovered facts to support the claim or defense. In reviewing the evidentiary record, the trial court must give the benefit of any reasonable doubt to the nonmoving party. Before judgment may be

granted, the court must be satisfied that it is impossible for the claim asserted to be supported by the evidence at trial. Huff. supra.

A review of the record in the instant case convinces us that the trial court properly granted defendants' motion for summary disposition. Plaintiff's alleged 'independent action' alleging fraud on the court was nothing more than a laundry list of findings of fact made at the conclusion of a 1974 trial on plaintiff's original complaint against defendants. These findings were made at the conclusion of the 1974 trial and at the conclusion of the numerous subsequent post-judment motion hearings. The trial court has had several opportunities to review plaintiff's claims in one form or another over the 14 years this plaintiff has kept the instant actions alive. Every decision made by the trial court has been appealed to this Court. Some of these decisions were appealed to the U.S. Supreme Court. We believe the trial judge correctly determined that this claim 'has been litigated to death.' Summary disposition was proper.

Plaintiff also seeks an order directing the lower court to deliver to this Court the 1974 trial exhibits. However, plaintiff's failure to cite any authority in support of his request precludes appellate review of the same. Tringali v. Lal, 164 Mich App 299; 416 NW2d 117 (1987). Moreover, because summary disposition was proper, this issue has become moot.

Affirmed."

4/25/88 State Probate Court Dismissed Don's $500,000+ 1986 Priority Claim, As If It Was A $1,500,000 Claim, Against Deft Carl-Sr's $450,000 Undervalued Estate Represented By "FMB Lumberman's" Bank's (Not Deceased Carl A. Johnson, Sr-Chosen "LUMBERMAN'S Bank's) Personal Representative Deft Atty O'Toole Who Represented Both The Deceased Joint

Venture Buyers-Disguised-As-Moneylenders And Sellers Of The Public Nightclub Overvalued Liquor Licenses:

"STATE OF MICHIGAN - IN THE PROBATE COURT FOR THE COUNTY OF MUSKEGON ****** In the Matter of the Estate of CARL A. JOHNSON, SR., Deceased

File No. 86-59607-SE

"ORDER ALLOWING SECOND ANNUAL AND THIRD AND FINAL ACCOUNTS OF PERSONAL REPRESENTATIVE, DISMISSING CLAIM, ALLOWING FEES OF FIDUCIARY AND OF ATTORNEYS, PAYMENT OF PARIIAL DISTRIBUTION, DISCHARGING SURETY BOND, ASSIGNING RESIDUE AND CLOSING OF ESTATE

At a session of said Court held in the Counmty Building in the City and County of Muskegon, State of Michigan, on the 25th day of April, 1988.

PRESENT: HONORABLE TOM H. LINCK, NEIL G. MULLALLY, Judge of Probate JUDGE.

This day having been appointed for hearing the petition of FMB-Lumberman's Bank, Personal Representative of said estate, requesting (1) the allowance of its Second Annual and Third and Final Accounts covering the period from February 1, 1967 through March 7, 1988, (2) the dismissal of the claim of Donald E. Johnson, (3) payment of partial distribution to Donald E. Johnson, (4) the allowance of the fees of said Personal Representative and of its Attorneys, O'Toole, Johnson, Potter, Rolf, Grafton & Eklund, (5) cancellation of the bond heretoforefiled, (6) assignment of residue and (7) closing of estate; and due notice of the hearing on said accounts and petition having been given as directed by said Court, the said petitioner appeared by their attorney, Thomas J. O'Toole, of O'Toole, Johnson, Potter, Rolf, Grafton & Eklund, and the Court being fully advised in the premises.

It appearing to the Court after due examination of said accounts and petition that said accounts are correct and ought to be allowed.

It further appearing to the Court that said deceased died on the 14th day of January, 1986, that the expenses of administrtion (except

for final attorney fees, additional Court costs, recording fees, any fiduciary income tax liability, any additional Michigan Inheritance Taxes and any miscellaneous closing costs) and all claims allowed against said estate, except for the claim filed against said estate by Donald E. Johnson, have been paid.

It further appearing to the Court that partial distribution of the total sum of $300,000.00 was previously made to the residuary legatees (except for the distributive share of $30,000 to Donald E. Johnson) pursuant to Order Allowing Partial Distribution entered with the Court on June 2, 1987.

It further appearing to the Court that pursuant to said Order Allowing Partial Distribution dated June 2, 1987, Carl A. Johnson, Jr., Richard G. Johnson, Calvin B. Johnson, Randy Johnson and Darlyn Jo Johnson, filed Surety Bond indemnifying the Personal Representative against future claims for debts, allowances, expenses, inheritance and estate taxes or part thereof.

It further appearing to the Court that the claim filed against said estate by Donald E. Johnson, has been disposed of by Summary Judgment by Opinion of the State of Michigan Court of Appeals, No. 92822 dated March 3, 1988.

It further appearing to the Court that the proceedings required by law for the proper administration and settlement of said estate have been taken, and that there remains to be assigned to the residuary legatees named in Paragraph III of the Codicil to Will of said deceased, a residue of the personal estate of the value of Forty Thousand Nine Hundred Fifty-Seven and 46/100 ($40,957.46) Dollars, less payment of the sum of $30,000 to Donald E. Johnson representing partial distribution of 10% of $300,000 previously reserved pursuant to Order entered with the Court on June 2, 1987, for a total residue of $10,957.46, less the payment of final attorney fees, additional court costs, recording fees, any fiduciary income tax liability, any additional Michigan

Inheritance Taxes and less any miscellaneous closing costs, and no real estate.

IT IS ORDERED that the Second Annual and Third and Final Accountings of said Personal Representative, covering the period from February 1, 1987 through March 7, 1988, be and the same is hereby allowed.

IT IS ORDERED that the claim filed against said estate by Donald E. Johnson, in the total sum of $1,500,000.00, is hereby dismissed with prejudice pursuant to Summary Judgment by Opinion of the State of Michigan Court of Appeals, No. 92822 dated March 3, 1988.

IT IS ORDER that the fees of FMB-Lumberman's Bank, in the total sum of $7,235.50, for services rendered during the period covering said accounts, be and the same is hereby allowed.

IT IS ORDERED that the attorney fees requested by O'Toole, Johnson, Potter, Rolf, Grafton & Eklund, in the total sum of $6,599.86, for services rendered, be and the same is hereby allowed.

IT IS ORDERED that the sum of $30,000.00 be paid to Donald E. Johnson, representing his distributive share of the partial distribution of $300,000.00.

IT IS ORDERED that the Surety Bond of Carl A. Johnson, Jr., Richard G. Johnson, Calvin B. Johnson, Randy Johnson and Darlyn Montoya, as Principals and Carl A. Johnson, Jr. and Richard G. Johnson as Sureties, to the Honorable Tom H. Linck, Probate Judge, as Obligee, be cancelled.

IT IS ORDERED that the residue of said estate of which said deceased died seized, less the payment of final Attorney fees, additional Court costs, recording fees, any Fiduciary income tax liability, any additional Michigan Inheritance Taxes, and less any miscellaneous closing costs, is assigned and distributed to the following residuary legatees, according o law and the Last Will and Testament of said deceased, to each the following part of proportion there, to-wit:

Carl Johnson, Jr.	20% thereof	$ 2,191.49

Calvin B. Johnson	40% thereof	4,382.98
Richard G. Johnson	20% thereof	2,191.49
Donald E. Johnson	10% thereof	1,095.76
Randy Johnson	5% thereof	547.87
Darlyn Jo Johnson	5% thereof	547.87
	*Total	$10.957.46

*less costs as hereinabove stated

IT IS FURTHER ORDERED that upon filing proper vouchers and receipts showing the distribution of the residue of said estate in accordance with this Order, that said Personal Representative be discharged, its acceptance of trust be cancelled, its letter of authority heretofore granted be revoked and annulled and said estate be closed.

s/TOM H. LINCK, Judge of Probate"

2/2/89

MICHIGAN SUPREME COURT - Order Entered 2/2/89

DONALD EDGAR JOHNSON,
Plaintiff-Appellant

SC: 83419
V. COA: 92822

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON,JR., and THE ESTATE OF CARL A. JOHNSON, SR., LC: 86-59607-SE
Defendants-Appellees.

"On order of the Court,the delayed application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court."

4/14/89

MICHIGAN SUPREME COURT - Order Entered 4/14/89

DONALD EDGAR JOHNSON,
Plaintiff-Appellant

SC: 83419
V. COA: 92822

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON,JR., and THE ESTATE OF CARL A. JOHNSON, SR.,
Defendants-Appellees.

"On order of the Court, the orders of February 2, 1989 and March 29, 1989 are hereby amended to correct a clerical error by correcting the notation of the lower court

docket number to read as follows: "LC: 86-021207-CZ".

7/31/89

MICHIGAN SUPREME COURT - Order Entered 7/31/89
DONALD EDGAR JOHNSON,
Plaintiff-Appellant SC: 83419
V. COA: 92822
RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON,JR., and THE ESTATE OF CARL A. JOHNSON, SR., LC: 86-21207 CZ
Defendants-Appellees.
"On order of the Court, the motion for stay of this Court's order of March 29, 1989 is considered, and it is DENIED."

6/5/89 Deft Judge Danhof Denied Appeal Of Right Of 4/25/88 Denial Of Estate Claim:

"STATE OF MICHIGAN - COURT OF APPEALS - 108452
FILED 6/5/89 **ROBERT J.DANHOF, Chief Judge**
RE ESTATE OF CARL A. JOHNSON, SR.
L.C. 86 509607 SE
"The Court orders that the motion to remand is DENIED for failure to persuade the Court of the necessity of a remand at this time."

7/2/89

STATE OF MICHIGAN - COURT OF APPEALS
In the Matter of the Estate of
CARL A. JOHNSON, SR., Deceased JUL 07 1989
DONALD EDGAR JOHNSON, Claimant-Appellant,
V. No. 108452
FMB LUMBERMAN'S BANK, Personal Representative of the Estate of Carl A. Johnson, Sr., Deceased, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., RANDY JOHNSON, and DARLYN JO MONTOYA,
Petitioners-Appellees.
Before: **Danhof, C.J.**, and Wahls and Griffin, JJ. L.C. 86 509607 SE
"PER CURIAM:.
Claimant Donald Johnson appeals as of right from an April 25, 1988, Muskegon Probate Court order allowing the second annual and third

and final annual accounts of the personal representative of the estate of Carl A. Johnson, Sr., dismissing claimant's claim against the estate, allowing fees of fiduciary and of attorneys, allowing payment of partial distribution, discharging a surety bond, assigning the residue and closing the estate. We affirm.

Claimant contends that because evidence was presented that his claim was based on another suit which was pending on appeal, the estate'counsel committed frauds upon the probate court by stating that his claim should be dismissed based on res judicata. Claimant further contends that the lower court erred in dismissing his claim. This Court addressed the other suit in Johnson v Johnson, unpublished opinion per curiam of the Court of Appeals, decided March 3, 1988, (Docker No. 92822), lv den 432 Mich 858 (1989), reconsideration denied 432 Mich 858 (1989). This Court stated:

A review of the record in the instant case convinces us that the trial court properly granted defendants' motion for summary disposition. Plaintiff's alleged "independent action" alleging fraud on the court was nothing more than a laundry list of fingins of fact made at the conclusion of a 1974 trial on plaintiff's original complaint against defendants. These findings were made at the concolusion of the 1974 trial and at the conclusion of the numerous subsequent post-judgment motion hearings. The trial court has had several opportuni ties to review plaintiff's claims in one form or another over the fourteen years this plaintiff has kept the instant action alive. Every decision made by the trial court has been appealed to this Court. Every decision of this Court has been appealed to our Supreme Court. Some of these decisions swere appealed to the United States Supreme Court. We believe the trial judge correctly determined that this claim "has be litigated to death." sumary disposition was proper.

The res judicata doctrine provide that, where two parties have fully litigated a particular claim and a final judgment has resulted, the claim may not be relitigated by either party. Van Deventer v Michigan National Bank, 172 Mich App 456, 463; __ NW2d __ (1988); DeCare v American Fidelity Fire Ins. Co. 139 Mich App 69,77; 360 NW2d 872 (1984), lv den 422 Mich 933 (1985). There are three prerequisites to the application of the res judicata doctrine: (1) there must have been a prior decision on the merits; (2) the issues must have been resolved in the first action, either because they were actually litigated or because they might have been presented in the first action, and (3) both actions must be between the same parties or their privies. Sloan v Madison Heights, 625 Mich 288,295; 389 NW2d 418 (1986); Decare, supra, p 77.

Michigan courts apply the res judicata doctrine boadly so as to bar claims that were actually litigated as well as claims arising out of the same transaction which a plaintiff could have brought, but did not. Gose v Monroe Auto Equipment Co., 409 Mich 147,160; 294 NW2d 165 (1980); Michigan Oil Co. v. Dep't of Natural Resources, 148 Mich App 745,753; 384 NW2d 77 (1985).

The record demonstrates that the estate's counsel did not commit a fraud on the lower court. The court dismissed claimant's claim on the basis of res judicata after finding that claimant had not presented anything other than his claims which had previously been litigated. The lower court did not err in dismissing claimant's claim.

Claimant contends that the estate's counsel was unqualified and the the lower court erred in ruling that claimant could not move to disqualify the estate's counsel. The lower court did not allow claimant to argue about the disqualification of the estate's counsel because he had previously litigated this matter. Res judicata barred claimant from relitigating his claim that the estate's

counsel should be disqualified. The lower court did not err.

Claimant's final contention is that he is entitled to accrued interest on his share of the estate from the date of partial distribution. The lower court did not address this matter. Therefore, we decline to review it. Providence Hospital v National Labor Union Health & Welfare Fund, 162 Mich App 191,194; 412 NW2d 690 (1987).

Affirmed. **s/Robert J. Danhof**, Myron H. Wahls, Richard Allen Griffin."

7/31/89 Michigan Supreme Court Affirmed "Danhoff" Infirm Decisions Regarding Consolidated 73 C7432 CK And 86-21207 CZ:

MICHIGAN SUPREME COURT - Order Entered 7/31/89

DONALD EDGAR JOHNSON,
Plaintiff-Appellant, SC: 83419
v. COA: 92822
RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., and THE ESTATE OF CARL A. JOHNSON, SR., L.C. 86-21207-CZ
Defendants-Appellees.

"On order of the Court, the motion for stay of this Court's order of March 29, 1989 is considered, and it is DENIED."

11/29/89

SUPREME COURT OF MICHIGAN - Order 11/29/89

In re Estate of CARL A. JOHNSON, SR., Deceased
DONALD EDGAR JOHNSON, SC: 87[illegible]
Claimant-Appellant, COA: 108452
v. L.C. 86-59607-SE
FMB LUMBERMAN'S BANK, Personal Representative of the Estate of Carl A. Johnson, Sr., Deceased, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., RANDY VAN JOHNSON, and DARLYNN JO JOHNSON,
Petitioners-Appellees.

"On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court."

12/2/89 U.S. Supreme Court No. 88-2116 DENIED Certiorari To Michigan Appellate Courts Regarding County Circuit Court 73-C7432CK Consolidated With 86-21207CZ.

APPENDIX C: 1970-98 DENIED REHEARINGS:

3/19/75

State Of Michigan-Court of Appeals

22496

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
V
CARL ALFRED JOHNSON SR, et al, Defendants-Appellees.

L.C.73 C7432CK

"...application for rehearing of * * * previous order denying the furnishing of a transcript to the plaintiff having been filed by plaintiff, and nothing having been filed in opposition thereto * * * DENIED for lack of merit in the grounds presented."

2/5/76

U.S. COURT OF APPEALS FOR SIXTH CIRCUIT
FILED JUL 21 1977 No. 77-1346

DONALD EDGAR JOHNSON,Plaintiff-Appellant,
v. L.C. No. 73-C7432 CK
CARL ALFRED JOHNSON SR., ET AL.,
Defendants-Appellees O R D E R

In this cause this Court having issued an order on September 24, 1975 denying the defendants-appellees' motion to dismiss and the defendants-appellees having filed a motion for reconsideration of this Court's order denying the motion to dismiss, and various motion for leave to use proposed capsule statment of proceedings having been filed by the plaintiff-appellant, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for reconsideration be, and the same is hereby GRANTED,

IT IS FURTHER ORDERED that this appeal be, and the same is hereby DISMISSED without

prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed in the trial court.

IT IS FURTHER ORDERED that the various motions for leave to use various proposed capsule statements of proceedings filed by the plaintiffappellant be, and the same are hereby DENIED."

2/25/76

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN

56870

DONALD EDGAR JOHNSON,
Plaintiff Appellant,

COA: 22496
LC: 74-7432

v

CARL ALFRED JOHNSON, SR., et al,
Defendants-Appellees.

"On order of the Court, the motion in pro per by plaintiff-appellant for reconsideration of this Court's order of July 2, 1975, is considered and the same hereyb is DENIED, because it does not appear that said order was entered erroneously."

8/4/76

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN

56870

DONALD EDGAR JOHNSON,
Plaintiff Appellant,

COA: 22496
LC: 74-7432

v

CARL ALFRED JOHNSON, SR., et al,
Defendants-Appellees.

"On order of the Court, the ex parte motion by plaintiff-appellant, in pro per, for reconsideration of motions, is considered and the same is hereby DENIED, as it is not appropriate under the General Court Rules."

8/18/76

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN

58097

DONALD EDGAR JOHNSON,
Plaintiff Appellant,

COA: 22496
LC: 73-C-7432

v

CARL ALFRED JOHNSON, SR., et al,

Defendants-Appellees.

"On order of the Court, the motion in pro per by plaintiff-appellant for recondsideration of this Court's order of May 26, 1976, is considered and the same is hereby DENIED, because it does not appear that said order was entered erroneously.

Plaintiff-appellant's motion to add certain defendantsl-appellees, and his motion for appointment of counsel, are also considered, and the same are hereby DENIED."

6/21/77

U.S. COURT OF APPEALS FOR SIXTH CIRCUIT
FILED JUL 21 1977 No. 77-1346

DONALD EDGAR JOHNSON,Plaintiff-Appellant,
v. L.C. No. 73-C7432 CK
CARL ALFRED JOHNSON SR., ET AL.,
Defendants-Appellees O R D E R

"Upon consideration of the appellant's motion for accelerated determination, correction of the record and to proceed on the original record with filing an appendix,

IT IS ORDERED that the motion be and it hereby is denied.

Appellant's motion for leave to make minor corrections to his brief is granted."

9/12/77

State Of Michigan-Court of Appeals 22496
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. L.C. No. 73-C7432 CK
CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

"In this cause, a motion for reconsideration of this Court's order of August 17, 1977, is filed by plaintiff-appellant, and no answer in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED tha the motion for reconsideration be, and the same is hereby DENIED. Judge Michael D. O'Hara not participating."

12/18/78

State Of Michigan-Court of Appeals 22496
"Robert J. Danhof, C.J., Presiding Judge
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. L.C. No. 73-7432 CK
CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

In this cause an application for rehearing of order of November 14, 1978 has been filed by the plaintiff-appellant and no answer in opposition thereto having been filed, and due consideration thereof being had by the Court,

IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED."

1/18/79

State Of Michigan-Court of Appeals 22496
"Robert J. Danhof, C.J., Presiding Judge
DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. L.C. No. 73-C7432 CK
CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

"In this cause, a second application for rehearing of the (11/15/78) denial of disqualification of defendants-appellees' law firm) * * * IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for lack of merit in the grounds presented."

12/4/79

State Of Michigan-Court of Appeals 45093
Robert J. Danhof, C.J., Presiding Jude
DONALD EDGAR JOHNSON,
Plaintiff-Appellant, L.C. No. 73-C7432 CK
v.
CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally,
Defendants-Appellees.

"In this cause an application for rehearing has been filed by the plaintiff-appellant and no answer in opposition thereto having been

filed, and due consideration thereof being had by the Court. IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED."

1/26/83

State Of Michigan-Court of Appeals 59895
DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.
LC: 73 C7432 CK

"...[I]n this cause an application for rehearing is filed by plaintiff-appellant, and no answer to in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED."

11/29/83

State Of Michigan-Court of Appeals 50565
JOHN H. SHEPARD, Presiding Judge
DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.
LC: 73-C7432 CK

"In this cause plaintiff-appellant has filed an application for rehearing of this Court's order of September 23, 1983, granting the motion for immediate consideration and denying the application for leave to appeal, and no answer to the application for rehearing having been filed, and due consideration of the foregoing having been had by the Court, IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for the reason that more than one year having elapsed from the date of judgment, plaintiff is required to file an independent action, GCR 1963, 528.3."

4/27/84

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN 73254
DONALD EDGAR JOHNSON,

Plaintiff Appellant,

v

CARL ALFRED JOHNSON, SR., et al,
Defendants-Appellees.

COA: 50565
LC: 73-C7432-CK

"On order of the Court, the motion in propria persona by plaintiff-appellant for reconsideration of this Court's order of January 30,1984, is considered, and the motion is DENIED, because it does not appear that said order was entered erroneously.

Further, the Clerk is directed to refuse to accept for filing any further pleadings in this matter from the plaintif-appellant, including the filing of a motion for reconsideration of this order, GCR 1963, 861.5."

10/31/84 **NO JUDGE'S NAME SHOWN**

State Of Michigan-Court of Appeals 78170
DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

"In this cause, an application for rehearing of this Court's order of September 20, 1984, denying an application for leave to appeal having been filed by plaintiff-appellant, and no answer in oposition thereto having been filed, and due consideration thereof having been had by the Court;

IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED for lack of merit in the gounds presented.

IT IS FURTHER ORDERED that the Clerk is directed to refuse to accept for filing any furthe pleadings in this matter fom plaintiff-appellant, including a filing of an application for rehearing of this order. GCR 1963, 816.5."

6/25/85

AT A SESSIN OF THE SUPREME COURT OF THE STATE OF MICHIGAN

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

v.

CARL ALFRED JOHNSON, SR., et al,
Defendants-Appellees.

SC: 75403
COA: 78170
LC: 73-C7432-CK

"On order of the Court, the motion for reconsideration of this Court's order of March 28, 1985 is considered, and it is DENIED, because it does not appear that the order was entered erroneously."

3/18/86 NO JUDGE'S NAME SHOWN!

"State Of Michigan-Court of Appeals 88008
DONALD EDGAR JOHNSON, Plaintiff, v
MUSKEGON CIRCUIT JUDGE, CARL ALFRED JOHNSON, RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., LANDMAN LATIMER CLINK & ROBB, Law Firm Partnership and WILLIAM F. McNALLY, Defendants.
L.C.73 C7432CK+86 21207CZ

In this cause a motion for rehearing is filed by defendant-appellant, and no answer inopposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the motion for rehearing be, and the same is hereby DENIED.

Judge Shepherd would grant."

4/28/87 NO JUDGE'S NAME SHOWN!

"IN THE MICHIGAN COURT OF APPEALS
ORDER April 28, 1987
Re: Donald Edgar Johnson
v. Docket No. 92822,
Richard Gordon Johnson,
L.C.73 C7432CK+86 21207CZ

"Robert J. Danhof, Chief Judge acting pursuant to MCR 7.211(E)(2), hereby orders: the motion for immediate consideration is DENIED."

7/21/87

IN THE MICHIGAN COURT OF APPEALS
ORDER April 28, 1987
Re: Donald Edgar Johnson, Plaintiff-Appellant,
v. Docket No. 92822
Richard Gordon Johnson, CARL ALFRED JOHNSON, JR., and the ESTATE OF CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees.
L.C.73 C7432CK+86 21207CZ

"In this cause plaintiff-appellant has filed a motion for rehearing, and now answer in opposition thereto being filed, and due consideration thereof having been had by the

Court;

IT IS ORDERED tht the motion be, and the same is hereby DENIED."

5/6/88

IN THE MICHIGAN COURT OF APPEALS

ORDER April 28, 1987

Re: Donald Edgar Johnson, Plaintiff-Appellant, v. Docket No.92822

Richard Gordon Johnson, CARL ALFRED JOHNSON, JR., and the ESTATE OF CARL A. JOHNSON, SR., jointly and severally, Defendants-Appellees.

L.C.73 C7432CK+86 21207CZ

"This Court orders that the motion for rehearing is denied."

9/8/89 **Wrong Lower Court Numbers. Should Be "L.C. #86 509607 SE":**

Court of Appeals - State of Michigan 108452

Robert J. Danhof, C.J., Presiding Judge

In The Matter Of Estate Of Carl A. Johnson, Sr.

L.C. # 73-C7432 CK, 86-21207 CZ

The Court orders that the motion for rehearing is DENIED." s/ROBERT J. DANHOF

10/13/89

Court of Appeals - State of Michigan 108452

Robert J. Danhof, C.J., Presiding Judge

In The Matter Of Estate Of Carl A. Johnson, Sr. L.C. # **86 509607 SE**

The motion to correct the order of September 8, 1989 is GRANTED, and the lower court number on that order is corrected to 86-59607-SE. In all other respects, the motion is denied."

9/27/91 **6th Cir. Court Of Appeals 91-1160, Including Judge NORRIS Who Was On 97-1944 Panel Of 2/10/98 Judgment Herein For Review, Denied Rehearing En Banc:**

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT 91-1160

DONALD EDGR JOHNSON FILED 9/27/91

Plaintiff-Appellant, LEONARD GREEN, Clerk

v

RICHARD GORDON JOHNSON, ET AL., ORDER

Defendants-Appellees

BEFORE: KEITH and NORRIS, Circuit Judges; and Weber, U.S. District Judge

"The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and cncludes that the issues raised in the etition were fully considered upon the original submission and decision of the case. Accordingsly, the petition is denied.

ENTERED BY ORDER OF THE COURT

s/LEONARD GREEN, Clerk

*Hon. Herman J. Weber sitting by designation from the Southern District of Ohio."

3/10/93 6th Cir. Court Of Appeals 92-1829 Denied Rehearing Of 12/23/92 Decision While Stating, "Judge Engel Recused Himself When This Case Was Originally Heard December 11, 1992":

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

DONALD EDGAR JOHNSON AND CLASS OF
PRO SE NONLAWYER ALLEGED CONFIDENCE
GAME VICTIMS,

Plaintiff-Appellant, 92-1829

V. Filed Mar 10 1993

RICHARD GORDON JOHNSON, et al,

DefendantsAppellees O R D E R

BEFORE: KENNEDY and BATCHEDLER, Circuit Judges, and BROWN, Senior Circuit Judge

"The appellant has petitioned the court to rehear its decision of December 23, 1992, affirming the orders of the district court denying appellant relief sought pursuant to Fed. R. Civ. P. 60(b). Susequent to the filing of the petition for rehearing, appellant filed a petition for rehearing en banc, a motion to recuse Judge Engel, and a motion to amend the caption.

After careful consideration of the petition for rehearing, the panel concludes that it

has not overlooked or misapprehended any point of law or fact in the order of December 23, 1992. It is therefore ordered that the petition for rehearing is denied.

Judge Engel recused himself when this case was originally heard December 11, 1992. Therefore, the motion to recuse is denied as moot. The petition for rehearing en banc is denied on the ground that appellant did not file the required number of copies of the petition. 6th Cir. R. 14. The motion to amend the caption is denied."

7/9/93 1964-65 Perpetrator Who Became 6th Circuit Court Of Appeals Judge INTERVENED ON THE DECISION-MAKING ORIGINAL PANEL As Shown By Re-Denial Of Rehearing:

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT
92-1829 Filed Jul 9 1993

DONALD EDGAR JOHNSON AND Class of Pro SE Nonlawyer Alleged Confidence Game Victims, Plaintiff-Appellant,

V.

O R D E R

BEFORE: KENNEDY and BATCHELDER, Circuit Judges, and BROWN, Senior Circuit Judge.

"The court having recived a petition for rehearing en banc, and the peititon haveing been circulated not only to the original panel members but also to all other active jduges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.[n]

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

[n]**The original panel included Judge Engel."**

4/29/94 Mich. Supreme Court Case No. 97521 Denied Rehearing Of 2/25/94 Denial Of Leave To Appeal Probate Court's Dismissal Of Don's Claim And Closing The Estate:

"ORDER

Michigan Supreme Court
Lansing, Michigan
97521 (43)

Entered April 29, 1994

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

v.

SC: 97521

ESTATE OF CARL A. JOHNSON SR.,
Defendant-Appellee.

COA: 158359

LC: 92-29070 AV

"On order of the Court, the motion for reconsideration of this Court's order of February 25, 1994, is considered, and it is DENIED, because it does not appear that the order was entered erroneously."

11/28/94 U.S. Supreme Court 94-146 Denied Rehearing Of 10/3/94 Denial Of Petition For Mandamus To Michigan Supreme Court 97521 Allegedly Because Issue Of District Judge Gibson's Disqualification Was Unresolved:

[This Joint Appendix Page 978 is missing from Petitioner's Files].

6/6/95 6th Cir. Court Of Appeals 94-2305 Denies Reconsideration Except For Correction From 12/12/90 To 12/19/90 Date:

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 94-2305 Filed 6/6/96

DONALD EDGAR JOHNSON, Plaintiff-Appellant,
v. RICHARD GORDON JOHNSON, et al, Defendants-Appellees.

"The plaintiff moves for reconsideration of an order which denied his motion for a stay of the district court's judgment. Upon consideration, we note the original order incorrectly stated that the judgment which the plaintiff sought to stay was entered on December 12, 1990, when in fact it was entered on December 19 1990. In all other respects, however, the motion to reconsider is DENIED."

8/25/95 6th Cir. Court Of Appeals 94-2305 Denied Rehearing Of 6/27/95 Denial Of FRCVP 60(b)(6) Relief:

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 94-2305 FILED AUG 25 1995

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

v.

RICHARD GORDON JOHNSON; CARL ALFRED JOHNSON, JR.; ESTATE OF CARL A. JJOHNSON SR.; LAW FIRM PARTNERSHIPS OF LANDMAN, LATIMER, CLINK AND ROBB; CULVER, LAGUE AND MCNALLY; O'TOOLE, STEVENS, JOHNSON, KNOWLTON & ROLF; O'TOOLE, JOHHON POTTER, ROLF GRAFTON& EKLUND, P.C.; STATE OF MICHIGAN; ROBERT J. DANHOF, Michigan Court of Appeals Chief Judge, jointly and severally, Defendants-Appellees.

"Upon consideration of the petition for rehearing filed by the appellant, IT IS ORDERED that the petition for rehearing be, and it hereby is, DENIED."

6/12/97 6th Cir. Court Of Appeals 96-1826/1979 Denied Petition For Rehearing En Banc:

Nos. 96-1826/1979

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED JUN 12 1997

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,

v. ORDER

RICHARD GORDON JOHNSON, ET AL.,
Defendants-Appellees.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were full considered upon the original submission and decision of the case. Accordingly, the petition is denied."

4/23/98 6th Cir. Court of Appeals 97-1944 Denied Rehearing Of 2/10/98 Dismissal Of Appeal Of District Judge Gibson's

Scheduling A Contempt Hearing Rather Than A First Time Hearing To Review Plaintiff's Constitutional Claims And Determine If There Should Be A Three Judge Court:

" Nos. 97-1944,97-1955 & 972062
U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT
FILED APR 23 1997

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v. O R D E R
RICHARD GORDON JOHNSON, ET AL.,
DefendantsAppellees.
Before MARTIN, Chief Judge, NORRIS AND CLAY

"Plaintiff-appellant has filed a petition for rehearing and supplement to the petition seeking reconsideration of this court's order of February 10, 1998 dismissing the appeals for lack of jurisdiction.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The petition for rehearing is denied."

APPENDIX D: OTHER MATERIAL

1955 Kandy Tapes & Records Corp. (Indiana) founded by President Donald Edgar Johnson and Hammond, Indiana music store owner, Hal Morris. Attorney was Hammond, Indiana's Saul Ruman.

1956 Amer.Fed.Musicians of U.S. & Canada affiliation agreement signed by AFM Pres. Herman Keven and Kandy Tapes & Records Corp. Pres. Donald Edgar Johnson.

11/17/58 Don's "Johnson's Boogie Woogie" Copyrighted And Published On Don's Kandy Music Publishers (BMI) With Don's Muskegon Homestead Address

1960-61 Don's wife who had replaced "bought out" Hal Morris is as Kandy officer, deserted Don, her children, and Kandy businesses.

1962 Don's wife who had been living with another man since 1960, filed a fraud upon courts divorce that Don deserted her. And Don's Pennsylvania lawyer and her lawyer recommended Don not waste time and money challenging the divorce because Don and lawyer's new-found evidence could prevail if necessary.

1/6/65 Deft O'Toole's Re-Draft Of Then-Attorney Albert J. Engel's Draft of Appendix To 12/22/64 Liquor Licenses Sales Agreement:

"APPENDIX TO SALES AGREEMENT * * * January 6, 1965.
TO: Alex T Novak and Berneice E. Novak * * * Dear Mr. and Mrs. Novak: I accept the Sales Agreement dated December 22, 1964 which you have executed and tendered to me; Provided;, however, you are agreeable to the following changes. * * * Initialed s/DEJ, s/ATN, s/BN * * * Very truly yours, s/Donald E. Johnson.
ACCEPTED: s/Alex T. Novak, s/Bernice E. Novak".

1/13/65 Evidence That Deft O'Toole WAS And IS Involved In The 1964-To-Date Confidence Game:

"SUN AGENCY * * * PURCHASERS STATEMENT
PURCHASER: Donald E. Johnson, a single man. PURCHASE OF "Push's Tap Room" - PURCHASE PRICE: $30,000.00 * * * **ATTORNEY O'TOOLE - ORIGINAL OPTION COMPOSITION CHARGE .. $45.00** * * * Anthony J. Mark, Assoc. Broker - s/Donald E. Johnson".

2/9/65 Deft Landman Law Firm, Representing Hackley Union Nat'l Bank, Drafted Perpetration Of Deft Richard's Confidence Game.

"DONALD EDGAR JOHNSON OR RICHARD G. JOHNSON" 1/11/65 $20,000.00 Savings Account Signature Card. (Not Musikist Savings Account owned solely by Donald Edgar Johnson). 1/11/65 Hackley Bank Signature Card.

"...TRUST AGREEMENT made this 9th day of February, 1965, between Donald E. Johnson, herein called SETTLOR, and Harry E. Gibson and Richard G. Johnson, herein called TRUSTEES * * * To assist in the financing of his said venture, Settlor has borrowed certain monies from Harry E. Gibson, Carl A. Johnson, Sr., Carl A. Johnson, Jr., and Richard G. Johnson, herein called CREDITORS * * * To secure the Creditors above named pending his acquiring the land contract interest above referred to, Settlor has concurrent herewith transferred the ownership of $14,000.00 of the savings now held by Settlor in a savings account in the name of MUSIKIST ..."

"1/11/65 HUNB (Savings A) -$20,000 * * * 3/18-3/22/65 Savings A +$5,250, Savings B +$14.000." Musikist Nightclub Ledger Sheets Showing Return Of Monies To Checking Account In Time For 3/18/65 Beginning Of Land Contract In Don's Name "Temporarily" Until Incorporation.

4/15/65 The Confidence Game Documents: (1) Which Were Locked From Don 1965-74, (2) Which O'Toole's Law Firm Refused To Produce For Don's Defense Against Deft Landman Firm's Deft Richard's 1970 Foreclosure, and (3) Which Magistrate Brenneman Refused To Acknowledge Were In Deft O'Toole Firm's Atty William Hipkiss's Writing At The 6/25/90 Hearing:

"ATTY HIPKISS TO DEJ-5/16/74 11 am
1. Unsigned copy of Bill of Sale
2. Machine copy of signed Sales Agreement
3. Unsigned copy of Amendment to Sales Agreement
4. Machine copies of Sun Agency letter to Donald Zemke
A. April 5, 1965

B. March 8, 1965
5.Carbon copies of purchasers statement
A. Biermacher, Clark, Scalici & Christensen
B. Novak
6. Copy of purchase agreement * * *
12. 4 Money Lender Statements (copies)* * *
15. Original Trust Agreement 2/9/65
16. Copy of Power of Attorney
17. Copy of Land Contract
18. Mortgage (copy) 4/15/65
19. Copy of letter to Sun Agency AJE 12/30/64
The above documents were gicven to me by Attorney Wm. J. Hipkiss on May 16, 1974.
s/Donald E. Johnson"

4/15/65 "The following were present at that meeting":
Atty Albert J. Engel, Jr.; Harry E. Gibson; Anthony J. Mark; 3 defendant Johnsons; and Plaintiff Donald Edgar Johnson.

12/31/65 Engel-Recommended Larnard Law Firm Transferred Don's Kandy Tapes & Records Corp. Indiana To Michigan For 12/31/65-12/31/66 Time Span

11/22/66 Engel-Recommended Atty Charles A. Larnard, Jr. Instructed Johnson Family To Hold Off Incorporating The Nightclub Until Better Nightclub Profit.

10/18/67 Deft Carl-Jr Resigned From Kandy Tapes & Records Corp. (Mich)

7/1/69 Deft Richard's Post-1/1/67 Atty Fred C. Culver, Jr Joined The Landman Firm Which Had Disguised Richard As A Moneylender To Don While Representing Nightclub Land Sellers. And Atty Culver Mistakenly Failed To Withdraw From This Matter. See Picker Intern. Inc. v. Varian Associates, Inc. [(1989 C.A.Fed.(Ohio)] 869 F2d 578.

1969 Don's Stored Mobile Home/Office And The Nightclub Were Burglarized Of

Substantial Kandy Documents

4/6/70 Deft Carl-Sr's Signature On Perpetrator Landman Firm-Drafted Proposal To Incorporate The Nightclub Which Don Rejected As A Sham.

5/20/70 Deft Landman's deft Fred C. Culver's greedy client, Deft Richard G. Johnson, foreclosed upon Don under false pretenses that the deft 3 Johnsons joint venturers with Don were moneylenders to Don in violation of 42 USC § 1985(2)(3).

7/27/70 When Don verbally turned over his equity in the venture to his father deft Carl-Sr Johnson because of the 5/20/70 forecloser. Don was unaware that Carl-Sr had secretly bought out Harry E. Gibson's interest regarding 12/15/64, 2/9/65, and 4/15/65 documents. This was ground for Don's 1986 claim against Carl-Sr's estate.

7/29-12/4/70 Unaware that Carl-Sr was secretly breaching fiduciary duties, Don provided him with Power of Attorneys #2 and #3 for winding down the venture while Don was mitigating damages in California.

12/70 Don learned in California that deft Carl-Sr had turned all of Don's equity in the venture over to deft Richard.

10/3/74 Deft 3 Johnsons' ONLY exhibit filed in the 1974 partial trial:

> "October 3, 1974 . . . (Deficit) ($2,148.88
> Note: The above does not include $13,437 owed Mr. and Mrs. C.A. Johnson, Sr. as of June 30, 1970 by Donald Johnson dba Musikist."

5/3/83 Don and assistant attorney filed lengthy emergency motion for new or partially-new trial:

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON

DONALD EDGAR JOHNSON,
Plaintiff-Appellant,
v.
CARL ALFRED JOHNSON, SR.,
A/K/A CARL ALFRED JOHNSON,
RICHARD GORDON JOHNSON, and
CARL ALFRED JOHNSON, JR.,
Jointly and Severally
Defendants-Appellees.

File No. 73 C7432 CK
Supreme Court 71091
Court of Appeals 59895

EMERGENCY MOTION FOR A NEW OR PARTIALLY-NEW TRIAL
Notice Of Hearing; Proof Of Service

Donald Edgar Johnson, In Pro Per
Attorney for Plaintiff-Appellant
William F. McNally (P-17533) and
Landman Luyendyk Latimer Clink & Robb
Attorneys for Defendants-Appellees

THIS PARTIALLY-LITIGATED 1973 CASE CONTESTS CUSTODY OF INTERSTATE KIDNAPPED MINOR CHILDREN AND ALLEGES CRIMES OF TAKING TOTAL PROPERTIES **AND BASIC CONSTITUTIONAL RIGHTS** UNDER FALSE PRETENSES TO COVER UP A $30,000 FEDERAL TAX EVASION.

NOW COMES DONALD EDGAR JOHNSON, plaintiff-appellant in pro per with assistant attorney Gary L. Veurink, and moves the court to order a new or partially-new trial of the above-entitled action for one or more of the following causes:

1. **Irregularity in the proceedings of the court and prevailing party.** On first day of trial, 10/3/74, plaintiff in pro per with assistant attorney John B. Olsen was denied a jury and the County still has plaintiff's $30 jury demand fee that was timely paid and never refunded. The trial was but partially-recorded because (a) its first half hour was not recorded by stenographer Robert C. Fazio, and (b) the many hours of stipulation sessions seret from plaintiff in pro per between has assistant attorney Olsen and codefendants' Landman law firm were not recorded. It was an unfair trial because (a) all pretrial and trial requests for admissions snd discoveries

were denied, (b) the trial Judge John H. Percey ordered frequent lengthy scattered secret-from-plaintiff-in-pro-per stipulation sessions that utilized in advance of proceedings plaintiff's pretrial-prepared chronological list of facts showing related exhibits (trial exhibit 1A) that enabled defendants' speedy coverup of vital points and drawn out presentation of side issues, (c) vital exhibits were rejected, (d) proceedings were somewhat slowed by Judge Piercey's ordering clerk to remove each exhibit from organized books brought in by plaintiff, and (e) plaintiff in pro per was denied so-called "editorial comments" as he presented testimony as if there would be time for a closing argument - then denied a bona fide closing argument to bag facts at end of testimony because there wasn't time for a closing argument. And a miscarriage of justice occured.

2. **An order of the court and the court's abuse of discretion which prevented the moving party from having a fair trial.** It was wrong for the court to (a) deny a jury for the question of damages from plaintiffs loss of his only 2 children who were interstate kidnapped and never seen or heard from for years, (b) deny that defendants answer none of several pretrial, trial, and post-trial requests for admissions and important discoveries, (c) deny adjudging that plaintiff owned substantial properties before and during the summer of 1964 when all parties went on a venture, (d) order valuable trial time to be used out of courtroom and presence of plaintiff in pro per by way of secret stipulation sessions between assistant attorney Olsen and opposing cousel - using plaintiff in pro per's detailed trial strategy papers for "staging" proceedings in defendants' favor where Olsen had been a member of opposing counsel's law firm and could collude to further his career at plaintiff in pro per's expense, (e) reject certain vital exhibits during the trial, (f) slow proceedings deliberately, then disallow their completion for lack of time,

and (g) pretend that plaintiff in pro per had rested his case without a closing argument and over plaintiff's objection.

3. **A decision against the great weight of evidence and contrary to law.** Plaintiff had full custody of his only children who were minors for 10 years and they were interstate kidnapped and defendants and their conflicting debtor- creditor interests federal tax-evading Landman law firm caused the loss and a jury was denied contrary to laws and the Constitution. Trial Judge Piercey's interrupting for 30 days the trial at mid-point during which opposing counsel helped his 11/74 reelection to another term on the bench, then cutting short the trial and signing opponent counsel's phony dismissal as if there was no cause of action - was against a preponderance of evidence --

a. That plaintiff had 3½ years' full custody of 9 years old daughter and 8 years old son plus substantial phono records-music publishing-real estate-cash properties worth up to a million dollard he went on a family phono records-music publishing-nightclub purchase joint venture about 8/20/64 when Landman Luyendyk Latimer Clink & Robb law firm partnership represented plaintiff potential Buyer and the potential Sellers of the Hoyt Street-Seaway Expressway nightclub real estate with over $25,000 federal liens on it,

b. That as all parties were represented by plaintiff who was represented by Landman law firms nightclub real estate Sellers' realtor Anthony J. Mark and no other law firm or lawyers, all parties went on a 15-years phono recordsmusic publishing-nightclub 15-years-land-contractpurchase family joint venture on 11/5/64 for purposes of financial gain and enhancin;g the way of life of plaintiff and his two small children who had an income of about $430 weekklyjust from plaintiff's travelng enterainer services, plus other phono records-music publishing incomes.

c.That defendants-appellees' present Landman Luyendyk Latimer Clink & Robb law firm

partnership entered in Muskegon County Register of Deeds a false pretense on 3/8/65 that there were no federal liens on the nightclub being purchased by the family joint venturers in plaintiff's name until incorporation would be formed,

d. That between 8/20/64 start of joint venture and the 4/24/73 start of this case, defendants and said Landman law firm did take plaintiff's total very substantial worldwide properties and child custody assets into a family phono records-music publishing-nightclub joint venture under false pretenses (i) they would use plaintiff's short term promissory notes only as memos for collateral until incorporation and would put plaintiff's $2900 that defendants took full custody of about 10/1/64 into an immediate bank escrow account, (ii) there were no over $25,000 federal liens on nightclub to be purchased by the joint venture escrow, and (iii) there would be fair equity in Michigan corporation(s) to be formed -- and (2) they fraudulently appropriated the joint venture assets without forming the corporation (a) via frauds on the plaintiff and this Muskegon Circuit Court (i) that defendants actually gave full custody of their money to plaintiff, not themselves, in exchange for his short term promissory notesmemos of collateral until incorporation, (ii) that there never was said 15-years joint venture and contract between plaintiff and defendants, (iii) that defendants were only short term money lenders with a valid $20,600 promissory notevalid motgage on nightclub real estate, (iv) that plaintiff was so stupid as to depart a lucrative career, invest his total assets, allow his phono records-music publishing assets to be stolen by Larnard and Larnard local law firm partnership, and invest 100 tedious hours weekly for 5½ years all by himself by way of solely his own decisions, not those of him, the defendants, and the Landman law firm, and (v) that defendants and their law firms never profited from taking said total assets from plaintiff and there was and remains no need

for a bona fide accounting to anyone. And said swindle put plaintiff and his two 10 years full custody minor children on California public welfare which interstate-kidnapped his minor children on 6/19/71 and denied even public welfare benefits for over 3 months. And plaintiff's costly attempts to mitigate California damages were fruitless. And defendants and their Landman law firm unlawfully use plaintiff's power of attorney(s), breached contracts, fraudulently converted properties, and committed libel & slander,

e. That one of the reasons that nightclub operation under plaintiff's management and under defendants' over-management was that the area's competition at least tripled almost instantly and constantly from day one of nightclub's remodeling-opening on a shoestring for lack of ample working capital, and

f. The nightclub appreciated markedly during the venture. The trial court decision-12/9/74 was contrary to law because it is against the law to convert a man's substantial properties, breach contracts via fraud, commit libel & slander, take away a man's total properties and child custodys under false pretenses, and obstruct justice. So many laws were broken that they are too numerous to list here and now and they are already listed and quoted in the record on file in this court.

4. Material evidence, which could not with reasonable diligence have been discovered and produced at the trial. The following material evidence was discovered since the trial and immediately produced into the record: Proof that all Kandy Tapes & Records Corp. (Indiana) assets were properly affiliated with American Federaion of Musicians of United States and Canada where there is no record that they were ever owned by anyone other than plaintiff to this day and where no phono record company can transfer ownership of its recordings without going through said Federation in writing. Proof that defendant Carl Alfred Johnson, Jr. was solely to blame for the family joint venturers'allowing the Larnard and Larnard

law firm to steal legal title to all 1956-1967 Kandy master recordings worth $40,000 to $1,000,000. Proof that there were bona fide federal liens on nightclub before 3/8/65 and after, but they were never paid to this day because of defendants' Landman law firm tax evasion of over $25,000 plus interest where plaintiff's power of attorney was used unlawfully. These proofs could not be produced at the trial because the American Federation of Musicians took too long to respond to plaintiff's many requests, defendant Carl-Jr's letter to plaintiff refusing to amend/correct the Larnard law firm's erroneous Kandy Tapes and Records Corp. (Michigan) name had been inadvertently lost among boxes and boxes of papers, and plaintiff had justifiably believed that now-Federal Judge Albert J. Engel, Jr. had been telling the truth on 4/6/65 when he wrote that the abstrats of the nightclub title showed no federal liens, and plaintiff had been releaved of all ownership so that he couldn't obtain the many very old abstracts without being very lucky and spending substantial time and money not available during trial but available during January and February 1982 just after plaintiff bootstrapped himself off welfare-filed over $5,000 transcripts.

5. **Errors of law occuring in the proceedings and mistakes of fact by the court.** It was error of law for Judge Piercey to deny a jury for question of damages from loss of children and deny a fair impartial trial and it was mistake of fact for Judge Piercey to rule that there never was as joint venture or joint venture contract and plaintiff had no cause of action where defendants and their conflicting interests Landman law firm took plaintiff's total properties and child custodys via fraud and under false pretenses whether or not there ever was a joint venture or joint venture contract. Judge Piercey failed to uphold the Constitution despite his swearing that he would as he took on the position of Circuit Judge. **He denied Due Process, Equal Protection, and Just Compensation.** And it was mistake of fact

on the Dismissal-12/9/74 to pretend that plaintiff lived at an address where he never set foot.

6. **On any ground warranting a new trial specified in sub-rule 528.3.** After Judge Piercey denied a new trial and after fraud was discovered about 2/22/82, plaintiff entered into the record positive proof of defendants' Landman law firm's over $30,000 federal taxes evasion by way of copies of old secretly hidden abstracts that were extremely hard to obtain. But Judge Piercey repeatedly knowingly and willfully denied plaintiff-appellant's filing any papers including another motion for a new trial up to this day including unfiled-but-preserved "Emergency Plaintiff-Appellant's Motion For A New Or Partially-New Trial; Notice Of Hearing; Proof Of Service" with letter to Judge Piercey dated 2/1/83. See Exhibit A which is attached hereto. Plaintiff can swear under oath that he brought this letter and motion to Judge Piercey's secretary who followed Judge Piercey's orders not to set a hearing date, showed the papers to Judge Piercey, and returned them to plaintiff saying that the Judge would not allow the motion to be filed. Judge Piercey did not sign and file, or dictate to the stenographer, a concise statement of his reasons therefor and the court clerk did not notify the attorneys for both parties of the decision of the motion for a new trial - contrary to GCR 527.8. Judge Piercey subsequently resigned from the bench.

7.. **On ground warranting a new trial where plaintiff-appellant has been denied Due Process-Equal Protection-Just Compensation** because the tax evading conflicting interests opposing counsel defrauded the state and federal courts that appellant was not a bona fide indigent deserving of requested suspension or waiver of meaningful transcripts cost within the GCR 806 18-months time limit. Defendants-appellees counsel, the Landman law firm, knowingly and willfully denied plaintiff-appellant of his Constitutional basic rights by blocking attempts to timely file the materials necessary to afford

his requested appeal of right on merits of trial court Dismissal- 12/9/74. The record of this case and its causes show that 3 men and their huge powerful influential law firm took this plaintiff's total substantial worldwide properties and child custodys plus basic civil rights of fair trial and due process of reasonable timely access to state-established appellate court plus substantial government property -- under false pretenses. And they will get away with it unless this court grants a new or partially-new trial or some other court grants an over 18-months fraudulently-delayed appeal of right or new trial. And if the government denies Constitution-guaranteed civil rights, the government itself is guilty of manifest injustice by failing to uphold its Constitution.

8. On ground that trial court can grant a new trial during its concurrent jurisdiction of the case during perfection of a fradulently-delayed appeal of right until the complete record including full transcript is transmitted to appellate court pursuant to GCR 802.2(1) and before any higher court's interlocutory decisions become the law of the case.

This motion is based upon the files and records in the above-entitled action, upon the evidence and proceedings in the trial thereof, and upon plaintiff-appellant's affidavits and interlocutory proceedings to acquire either an appeal of right or a new trial.

Dated: May 3, 1983.

s/DONALD EDGAR JOHNSON, In Pro Per..."

5/20/83

"Said Order * * * Condones 3 Men And Their Agents' Taking Substantial Government Property Plus A Man's Total Worldwide Substantial Properties, Child Custodys, And Basic Constitutional Rights * * * Under False Pretenses". 5/20/83 Trial Court Motion To Rescind Order Denying Evidentiary Hearing.

4/21/86:

"The Constitution says that when someone puts out, he is to get just compensation. If he puts it out to the public, he still supposed to be compensated justly. I entertained the public and what I put into it was taken away from me, many thousands and tens of thousands of dollars worth of effort and I never received just compensation. The case was brought before (trial) Judge Piercey and he went along with the powerful opposition . . . So Judge Piercey dismissed. Now, I brought before Judge Kobza, that's you, the situation whereby this dismissal in 1974 was procured by fraud upon the courts and prolonged for 11 years. There were parts of the case in the Court of Appeals, but the Court Appeals never received the record, the full record. So they never had a chance to examine the full picture of what was going on, and so I was never given an appeal of right nor was I given a delayed appeal (of right). When you denied me a new trial on the grounds of fraud upon the courts, I was still pursuing a delayed appeal of right in the upper courts. I wasn't through yet. And the record to this date has never left the trial court for examination by any other court. . . . The Michigan Supreme Court had not yet finished reviewing the matter at a time when you denied my motion. . . And then in '84, you denied my (filing my) independent action. . . This court abused its discretion . . . This court refused to file an independent action. It did not act on it. It refused to even allow it to be filed. So how could this court properly review if they didn't allow it to be filed? . . . So because of the federal and state laws allowing frauds upon the courts to be aired before upholding the dismissal, this court must allow a hearing of my 12 frauds upon the courts filed in May of '83, and this cCourt must also uphold the United States Constitution which says just compensation for services rendered whether to private or public, and this court must also take into mind that I'm in pro per and that liberal construction

should be awarded my complaint. . . I was filing a civil suit because nobody in the prosecutor's office would help me file a criminal suit. . . I did file my affidavit of indigency. I was a bona fide indigent and was on welfare. I was picking up garbage and weeds from the grass at the county building, here, for years. There was no way to get a transcript before I did. And I told the proper authorities timely and so I did what I was supposed to do." 4/21/86 Trial Court Hearing Before Judge Kobza.

7/9/93 The Panel Which Pretended To "Correct" Judge Engel's Intervention Refused To Correct Fact That Don DID File The Requisite Number Of Copies Of His Petition For Rehearing En Banc. See 3/10/93 Denial Of Rehearing En Banc:

"...The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the peitition is denied." 7/9/93 6th Cir. Court Of Appeals Re-Denial Of Rehearing.

10/11/94 Affidavit In Support Of Plaintiff's Motion For 28 USC § 144 Disqualification Of Judge Gibson:

"AFFIDAVIT * * * Donald Edgar Johnson, first duly sworn and deposed, says:

1. He is plaintiff herein this nonclosed case.

2. This affidavit is made in good faith.

3. Judge Benjamin F. Gibson cut plaintiff off at the 12/5/90 dispositive hearing thereby preventing plaintiff from refering to his evidence filed long before that hearing and re-filed at the onset of that hearing.

4. A hearing before an unbiased and impartial decisionmaker is a basic requirement of due process.

5. The probability of actual bias on the part of decisionmaker Judge Gibson is too high

to be constitutionally tolerable.

6. No person, including persons within a class of resulted indigent pro se nonlawyer victims of fiduciaries' longtime Confidence Game-abuse of Judicial Process conspiracies, shall be denied the equal protection of the laws.

7. Contrary to FRCVP 56, Judge Gibson 12/5-12/19/90 did not due processequal protection adjudicate defendants' motion for res judicata summary disposition on plaintiffs' evidence.

8. Despite plaintiff's filing pertinent 1973-82 state trial evidence 1-judge reviewed then ordered removed in 1983, plus state judgments procured without due process, Judge Gibson joined state courts' 1974-89 denying plaintiff's due process-equal protection right of appellate review.

9. Contrary to federal doctrine of res judicata [Allen v McCurry (1980) 449 US 90,95, 66 LEd2d 308,313, 101 S Ct 411], Judger Gibson did not due process-equal protection 12/5-12/19/90 deny defendants' motion for res judicata summary disposition.

10. Contrary to U.S. Const. Amend. 1, Judge Gibson did not due processequal protectin provide reasonable access for plaintiff's 1/10/92 emergency (undocketed) motion for FRCVP 60(b) relief supported by a copy of plaintiff-appellant's 725-pages Joint Appendix that was ignored by Court of Appeals for the Sixth Circuit No. 91-1160 thanks to defendants-appellees' masquarading as defendants-appellants with supplementary joint appendix duplicating their 12/5-12/19/90 switched-for-plaintiff's' evidence in district court.

11. Contrary to Judge Gibson's 4/167/13/92 Orders rejecting plaintiff's emergency 1/10/92 motion and supplements for FRCVP 60(b) relief -- (and in agreement with Judge Gibson's 1/9/94-entered Order allowing further pleadings) -- no 12/18/90 "final" judgment has already been entered dismissing this action so that 'the case is not longer pending in this or any other federal court'.

12. Contrary to Judge Gibson's 4/167/17/92 Orders, Judgment in this action was not entered on December 18, 1990; rather, it was entered on December 19, 1990.

13. Nowhere in the Judge Gibson 12/19/90-entered opinion and judgment is there dismissal of the action; rather, there is dismissal of just the original thru 4th amended complaints. See Opinion and Judgment (docket nos. 102,103).

14. Contrary to Judge Gibson's 4/16-7/13/92 Orders, no 12/18/90 final judgment dismissed this action; rather, a 12/19/90 non-final judgment dismissed plaintiff's original thru 4th amended complaints.

15. Judge Gibson 1/11/92-9/27/94 refused to grant FRCVP 60(b)(5)(6) relief that would have set aside or vacated his 12/19/90 thru 9/27/94 judgment and orders procured by extrinsic frauds upon the courts and/or without due process-equal protection.

16. Judge Gibson 1992-94 refused plaintiff FRCVP 60(b)(6) relief plus FRCVP 15(a) leave to file an amended complaint comporting with his proponderance of evidence when justice so required.

17. Contrary to U.S. Const. Amends. 5 and 14 due process-equal protection clauses, Judge Gibson -- without providing due process-equal protection to plaintiff -- entered 1990-94 judgments and orders that are consistently blatantly partial to defendants.

18. Plaintiff complained to the U.S. Supreme Court Nos. 93-951 + 94-146 of Judge Gibson's 1990-94 judicial misconduct and urged his disqualification since 10/1/93 on heels of a fruitless interlocutory appeal to the U.S. Court of Appeals for the Sixth Circuit Nos. 91-1160 + 92-1829 that would have remedied the misconduct without disqualification.

19. Plaintiff mailed copies of his 10/1/93 and '7/22/94-pending' two U.S. SUpreme Court Petitions for Extraordinary Writ to Judge Gibson in care of the Clerk of this Court. See 10/1/93 Petition, pp 38,49; 7/22/j94 Petition, pp 8-10, herein the record of this case.

20. Despite plaintiff's urging, the U.S. Supreme Court declined to review this matter on the merits; i.e. on the record.

21. Relief from Judge Gibson's 12/18/90-filed thru 9/23/94-filed judgments pursuant to Rule 60(b)(6) should have been 3/11/92-9/27/94 granted in this case arising over dispute between liltigants where Judge Gibson had violated 28 USCS § 456(a), which concerns disqualification of federal judges and Judge Gibson should have known of circumstances which disqualified him, for lack of impartiality, from 12/5/90-9/27/94 hearing this dispute.

And this case's 3/11/92-9/27/94 2½-years delay was attributable to Judge Gibson's inexcusable failure to disqualify himself.

Plaintiff believes that he is filing this affidavit at least ten (10) days prior to any district court judge's yet-unannounced hearing of plaintiff's appeal for FRCVP 59(e) relief from Judge Gibson's 9/27/94 Order affirming Magistrate Judge Hugh W. Brenneman, Jr.'s post-1/5/94 pertinent decisions favorable to defendants on ground of Judge Gibson's 3/11-7/13/92 erroneously denying access to plaintiff's 3/10/92 motion for FRCVP 60(b) relief from the 12/19/90 judgment, then repeatedly erroneously ruling that his 12/19/94 judgment dismissed the entire case rather than the complaints.

23. Plaintiff's actions:

#1: 4/73-11/89 (contract-motion for relief);

#2: 2/86-11/89 (independent for relief);

#3: 5/86-TO DATE (estate claim);

#4: 2/90-TO DATE (civil rights, copyright etc);

24. Justice requires that Judge Gibson disqualify himself, a different judge provide FRCVP 59(e) relief altering or amending Judge Gibson's 9/27/94 Memorandum Opinion & Order, and a FRCVP 60(b)(5)(6) evidentiary hearing be provided for resolving the following issues forthwith:

A. WHETHER PERTINENT 1974-TO-DATE STATE AND FEDERAL COURT JUDGMENTS OF PLAINTIFF'S

ACTIONS #1 THRU #4 SHALL BE SET ASIDE OR VACATED BECAUSE THEY WERE PROCURED BY FRAUDS UPON THE COURTS AND/OR WITHOUT DUE PROCESS-EQUAL PROTECTION. FRCVP 60(b)(5)(6); U.S. CONST. AMENDS. 1,5,14?

B. WHETHER THE DEFENDANT ESTATE'S ATTORNEY THOMAS J. O'TOOLE -- (NOT THEN-ATTORNEY ALBERT J. ENGEL) -- DRAFTED THE ALLEGED UNLAWFUL 1/6/65 APPENDIX TO 12/22/64 NIGHTCLUB SALES AGREEMENT AT THE HEART OF THIS 196494 DISPUTE?

C. WHETHER DEFENDANT LAW FIRMS ARE UNQUALIFIED TO REPRESENT ANY OF THE JOINT AND SEVERAL DEFENDANT THREE JOHNSONS?

D. WHETHER PLAINTIFF SHALL PROCEED ON HIS CAPTION-SUPPLEMENTED (TO EXCLUDE JUDGE ALBERT J. ENGEL) 1/24/94 CLASS ACTION 5TH AMENDED COMPLAINT SUPPORTED BY HIS 725 PAGES JOINT APPENDIX?

25. Plaintiff has yet to receive any compensation from defendants' severe continuing wrongdoing since 1964.

Further, affiant sayeth not.

s/DONALD EDGAR JOHNSON"

5/17/96 Deft Landman Firm's Rerpesentative Wrote To Magistrate Brenneman That He Withdrew From The Firm In 1992 And His Prior Appearance "Terminated With The Termination Of The Underlying Proceedings":

"...I filed an appearance on behalf of one of the named defendants Landman, Latimer, Clink & Robb, **P.C.** * * * Judge Gibson dismissed this action and your subsequent appeal of Judge Gibson's dismissal to the United States Court of Appeals for the Sixth Circuit was also dismissed. I believe that I did file an appearance on behalf of Landman, Latimer, Clink & Robb in the United States Court of Appeals for the Sixth Circuit on your initial appellate

filing. As both the District Court action and the subsequent appeal have now terminated through final orders, it is my belief that any responsibility I may have had as counsel of record has also terminated. * * * s/Steven C. Kohl. cc: Magistrate Hugh W. Brenneman, Jr."

May, 1996: Don's so-called "son" Randy Van Johnson requested copy of Don's Will. And Don stopped contact with him ever since. (Don's so-called "daughter" Darlynn Jo Johnson/ Montoya-etc -- who became "owned" by gang(s) and mothered white and black children, then "lost" them -- had already stopped providing her address or any contact with Don).

6/28/96: The Donald E. Johnson who allegedly signed Donald Edgar Johnson's pertinent documents for stealing Don's private properties DIED.

"...Mr. Johnson was also a member of the Muskegon City Commission, serving 3 terms as Mayor and was co-organizer of Muskegon Federal Credit Union * * * Johnson was elected to the commision in 1964 and spent 18 years there." 6/28/96 Muskegon Chronicle.

7/9/96: An attempt was made on "Whistle-Blower" Don's life by a gang of blacks targeting his remaining private properties in storage.

8/4/97: Don Filed His Objections To The Magistrate's 8/1/97-Filed Report And Recommendation:

U.S. DISTRICT COURT- WESTERN DISTRICT OF MICHIGAN-SOUTHERN DIVISION File No. 1:90-CV-175
Hon. Benjamin F. Gibson
RELATED: Mich. SupremCt/ #97521
U.S. Supreme Ct. #94-146, #95-934
6th Cir Ct. Of Appeals #94-1826/1979
CLASS ACTION REQUESTED
Three-Judge Court Requested

DONALD EDGAR JOHNSON,
Plaintiff,

V.

PLAINTIFF'S EMERGENCY MOTION TO ALTER, AMEND, OR VACATE THE 7/31/97 REPORT AND RECOMMENDATION; AND, IN THE ALTERNATIVE, TO VACATE THE 12/19/90 JUDGMENT AND 1/5/94 ORDER

RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., THE ESTATE OF CARL A. Johnson, SR., THE LAW FIRMS OF LANDMAN LATIMER CLINK & ROBB. CULVER LAGUE & McNALLY, O'TOOLE STEVENS JOHNSON KNOWLTON & ROLF, O'TOOLE JOHNSON POTTER ROLF GRAFTON & EKLUND, P.C., THE STATE OF MICHIGAN, And ROBERT J. DANHOF, Michigan Court Of Appeals Chief Judge, Jointly And Severally,
Defendants.

NOW COMES Donald Edgar Johnson, 24-Years-Nonlawyer-In-Pro Per, who pursuant to FRCVP 59(e) moves the Court to alter, amend, or vacate the Magistrate Judge Brenneman 7/31/97 Report And Recommendation and, in the alternative, to vacate its 12/19/90 Judgment plus 1/5/94 Order.

A Brief in support is attached. * * *

QUESTION

I. WHETHER NONLAWYER'S POST-APPEALS RULE 60(b)(6) PETITION FOR 28 USC §§ 144,2283,2284 RELIEF WITH CONSTITUTIONAL CLAIMS -- THAT HIS SUBSTANTIAL PROPERTIES WERE TAKEN BY STATE'S AGENTS FOR PUBLIC USE WITHOUT COMPENSATION AND THAT HIS FEDERAL QUESTION-INTERFERING WITH CIVIL RIGHTS CLASS ACTION AMENDED COMPLAINT'S RES JUDICATA DISMISSAL WAS PROCURED AND PROLONGED BY FRAUDS UPON THE COURTS WITHOUT DUE PROCESS -- MUST BE FILED, REVIEWED FOR NONFRIVOLOUSNESS, PROVIDED A 3 JUDGE DISTRICT COURT'S RULING, AND APPEALED TO SUPREME COURT -- RATHER THAN NOT BE FILED, REJECTED AS FRIVOLOUS, PROVIDED SAME ONE JUDGE DISTRICT COURT FOR DETERMINING IF NONLAWYER SHOULD BE HELD IN CONTEMPT FOR DISREGARDING ORDER TO OBTAIN LEAVE FROM SAME MAGISTRATE BEFORE ATTEMPTING TO FILE, AND APPEALED TO COURT OF APPEALS?

II. WHETHER THIS COURT SHOULD VACATE ITS 12/19/90 JUDGMENT AND 4/17/92 ORDER? * * * Allstate v. Michigan Carpenters' Coun. H. & W. Fund (1991 WD Mich) 760 F Supp 665,668 * * * Armour v. Ohio, (1991 CA6 Oh) 925 F2d 987 * * * Hernandez v. Finley (1979 ND Ill ED) 471 F Supp 516; affd 440 US 951, 59 LEd2d 765, 99 S Ct 1488 * * * Huguley v. General Motors Corp. (1994 CA6 Mich) 35 F3d 1052 * * * Injunction of State Proceedings, 66 LEd2d 903 * * * Mertik v Blalock (1993 CA6 Oh) 983 F2d 1353 * * * Overbee v. Van Waters & Rogers (1985 CA6 Oh) 765 F2d 578 * * * U.S. v.Twitty (1995 CA6 Mi) 44 F3d 410 * * * 28 USCA §§ 144,636, 1253,2283,21284,2844; 42 USC §§ 1983,1985(2) (3); FRCVP 60(b)(6)..."

8/8/97: Don's Supplement To 8/4/97 Emergency Objections To Magistrate's Report & Recommendation Certified Facts With Copies Of 1964-65 Ledger Sheets And 3 1964-97 Constitutional Claims:

"...Constitutional Claim #1: Between 1964 and 1973, THE DEFENDANTS CONFIDENCE GAME-UNDER THREAT OF VIOENCE TOOK Don's near-total private properties worth $40,000-$1,000,000 for their public/political/private use without compensation in violation of Amendments 5,14.

Constitutional Claim #2: Between 1973 and 1994, the defendants procured and prolonged Don's Breach of Contract-Conversion-Libel & Slander Plus Defendant Estate Claim dismissals by frauds upon the courts without due process-equal protection-just compensation in violation of Amendments 1,5,14.

Plaintiff Don is a member of a class of nonlawyer public service provider victims of State agents' unconstitutional unlawful tortious conduct -- a class which is the object of invidious discriminations.

CONSTITUTIONAL CLAIM #3: Between 1990 and 1997, the defendants procured and prolonged Don's federal question-interfering with civil rights class action amended complaint's res judicata dismissal by frauds upon the courts[n4] without due process[n5] in violation of Amendments 1,5,14."

8/9/97: Don's 2nd Supplement To 8/4/97 Objections Detailing Reasons For Vacating The 12/19/90 Judgment Plus 1/5/94 Order On Ground Of Frauds Upon The Courts With Attached "Twenty-Two Court Orders Interfering With Civil Rights In State Courts & U.S. Supreme Court" Fraudulently Omitted From Defendants' 3/21/90 Dossier Of Judgments.

8/15/97 Emergency Motion To Alter Or Amend Court Judge's 8/13/97-Filed Order (Followed By 2 Supplements).

9/97-4/98: Don's Mouth Became Mysteriously Infected Requiring Expensive Root Canal Treatment On Heels Of Dentists' Malpractice. And His Personal Computerized Legal Files Became Unavailable By Malfunctioning "Obsolete" Word Processor Locally Labeled "Beyond Repair".

10/31/97: Defendants Wrote Court Of Appeals That They Would Not Be Participating In Appeals.

10/31-12/22/97: Pltf Don Requested That His Joint Appendix Volumess I-VIII (Over 2,000 Pages) Be Adopted As Part Of Current Record In Court Of Appeals.

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END OF 6/98 APPENDIX